



**Heidelberg Papers
in South Asian
and Comparative Politics**

**Defining Religion: The Indian Supreme Court
and Hinduism**

by

Ronojoy Sen

Working Paper No. 29

November 2006

South Asia Institute
Department of Political Science
University of Heidelberg





About HPSACP

This occasional paper series is run by the Department of Political Science of the South Asia Institute at the University of Heidelberg. The main objective of the series is to publicise ongoing research on South Asian politics in the form of research papers, made accessible to the international community, policy makers and the general public. HPSACP is published only on the Internet. The papers are available in the electronic pdf-format and are designed to be downloaded at no cost to the user.

The series draws on the research projects being conducted at the South Asia Institute in Heidelberg, senior seminars by visiting scholars and the world-wide network of South Asia scholarship. The opinions expressed in the series are those of the authors, and do not represent the views of the University or the Editorial Staff.

Potential authors should consult the style sheet and list of already published papers at the end of this article before making a submission.

Editor	Subrata K. Mitra
Deputy Editors	Malte Pehl Jivanta Schöttli Siegfried Wolf
Editorial Assistant	Henrike Lott
Editorial Consultants	Katharine Adeney Mike Enskat Alexander Fischer Karsten Frey Evelin Hust Karl-Heinz Krämer Apurba Kundu Peter Lehr Kenneth McPherson Marie-Thérèse O'Toole Mattnias Paukert Christian Wagner Clemens Spieß Wolfgang-Peter Zingel

Defining Religion:

The Indian Supreme Court and Hinduism

RONOJOY SEN

*The Times of India, New Delhi*¹

In this paper I examine how the Supreme Court in independent India has defined Hinduism and the consequences that flow from attempts to define Hinduism. The Court's proclivity to define religion, especially Hinduism, can be seen as flowing partly from Articles 25 and 26 — often referred to as the freedom of religion clauses — of the Indian Constitution. Article 25 guarantees the right to “profess, practice and propagate religion”, but also permits the state to regulate “economic, financial, political or other secular activity associated with religious practice” as well as provide for “social welfare and reform” of Hindu religious institutions.² Article 26 guarantees religious denominations, among other things, freedom to manage their religious affairs.³ Since the “wording of Articles 25 and 26 establishes the primacy of public interests over religious claims and provides a wide scope for governmentally sponsored reforms,”⁴ the Supreme Court has often had

¹ Ronjoy Sen received his Ph.D. in Political Science in 2005 from the University of Chicago and was a South Asia Fellow at the East West Center, Washington in 2005. He is currently Assistant Editor for the Times of India in New Delhi.

² Article 25 (1) Subject to public order, morality and health and to other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law —

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes of and sections of Hindus.

³ Article 26 states: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right —

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

⁴ Marc Galanter, *Law and Society in Modern India* (New Delhi: Oxford University Press, 1997), 247.

to adjudicate on which religious denomination or institution legally qualifies as Hindu.

I propose that the Supreme Court rulings on what does and does not qualify as Hindu are embedded in a discourse on classical or high Hinduism that originated with the nineteenth century reformation of Hinduism. For the greater part of its existence in independent India the Court appropriated this discourse about classical Hinduism to emphasize the inclusive and tolerant qualities of Hinduism as well as to advocate reform of Hinduism. Perhaps the most influential of these rulings was the Supreme Court's judgment in *Sastri Yagnapurushdasji v. Muldas Bhundardas*⁵ or the Satsangi case. In this case Hinduism was memorably described as a "way of life." This understanding of Hinduism would be used in several later court rulings. But in the mid-Nineties — when the Nehruvian consensus on secularism had been severely shaken by the rise of the Hindu nationalists — the Court in the controversial 'Hindutva' ruling⁶ conflated an inclusivist discourse on Hinduism with the exclusivist version of Hinduism propounded by Hindu nationalists. Though the Hindutva judgment was viewed by some as an aberration, I argue that, paradoxically, it was a product of the dominant judicial discourse on Hinduism.

Genealogy of 'Hinduism'

It is now commonly accepted that use of the term 'Hinduism' or 'Hindu' to denote a single religious community is of recent origin. As historian Romila Thapar points out, "the first occurrence of the term 'Hindu' is as a geographical nomenclature."⁷ The earliest mention of Hindu can be found in the inscriptions of the Achaemenid empire which refer to the frontier region of the Indus or Sindhu as 'Hi(n)dush'. Much later, Arabic texts would refer to the land across the Sindhu or Indus river as 'Al-Hind'. W.C. Smith writes, "The term hindu, and its dialectical alternative sindhu, are the Indo-Aryan word for 'river', and, as a proper noun, for the great river of the northwest of the sub-continent, still known locally as the Sindh and in the West through the Greek transliteration as 'Indus'. As a designation for the territory around that river (that is, meaning roughly, 'India') the word was used by foreigners but not internally, and indeed it (and the Persian counterpart 'Hindustan', introduced and used by Muslims) is still primarily an outsider's name for the country."⁸

It was only from the nineteenth century that the term Hinduism⁹ came to be in vogue. In large measure it was introduced by British scholars,

⁵ AIR 1966 SC 1119.

⁶ *R.Y. Prabhoo v. P.K. Kunte*, AIR 1996 SC 1113

⁷ Romila Thapar, "Imagined Religious Communities? Ancient History and the Modern Search for a Hindu Identity," *Modern Asian Studies* 23, 2 (1989), 222.

⁸ Wilfred Cantwell Smith *The Meaning and End of Religion: A New Approach to the Religious Traditions of Mankind* (New York: Macmillan, 1962), 30.

⁹ The Oxford English dictionary traces the first use of the term 'Hindooism' to 1829 in the *Bengalee* and also to an 1858 usage by Indologist Max Mueller. See Richard King, "Orientalism and Modern Myth of "Hinduism"", *Numen*, vol. 46 (1999), 165. See also John Stratton Hawley, "Hinduism and the Fate of India," *Wilson Quarterly* (Summer 1991).

missionaries and administrators. However, as Frykenberg notes, the term Hindu was used by the British in a negative sense to “characterize all things in India (especially elements and features found in the cultures and religions of India) which were not Muslim, not Christian, not Jewish, or, hence, not Western.”¹⁰ In this sense, as Frykenberg, as well as Heinrich von Stietencron, point out ‘Hindu’ merely supplanted the earlier term ‘gentoo’ which was used to designate heathens.¹¹ This meant that the multiplicity of beliefs, practices and doctrines within Hinduism was subsumed under one omnibus term. But the plurality within Hinduism continued to confound the “Western love of definition and neat pigeon-holing.”¹² In fact, the narrative of Hinduism confounding outsiders has a long history: the famous medieval traveler Albiruni (973-1048) was clearly perplexed during his travels in India by the diversity among Hindus.¹³ One of the reasons for this sense of confoundment was that unlike other world religions Hinduism is “not a linear progression from a founder through an organizational system.”¹⁴ Instead Hinduism can be read as a “mosaic of distinct cults, deities, sects and ideas and the adjusting, juxtaposing or distancing of these to existing ones, the placement drawing not only on belief and ideas but also on the socio-economic reality.”¹⁵ Faced with what appeared to them to be a bewildering mosaic, Western scholars often resorted to metaphors like the ‘jungle’ or ‘sponge’ to map Hinduism.¹⁶

At the same time, the British made a distinction between the living religion of the Hindus and what was characterized as the purer Vedic religion. P.J. Marshall points out from the latter half of the eighteenth century the “Europeans had begun to make the distinction, which was to have so long a life, between what they regarded as ‘popular’ Hinduism and ‘philosophical’ Hinduism. Popular cults were described to be condemned or ridiculed, but most writers were also prepared to admit the existence of metaphysical assumptions and ethical doctrines in Hinduism which they could approve because they seemed to be similar to western concepts.”¹⁷ Through the nineteenth century European scholars contributed profoundly to the modern construction of Hinduism by first “locating the core of Indian religiosity in certain Sanskrit texts” and second by defining Hinduism based

¹⁰ Robert Eric Frykenberg, “The Emergence of Modern ‘Hinduism’ as a Concept and as a Institution: A Reappraisal with Special Reference to South India,” in Gunther D. Sontheimer and Herman Kulke eds., *Hinduism Reconsidered* (New Delhi: Manohar Publications, 1991), 31.

¹¹ Heinrich von Stietencorn, “Hinduism: On the Proper Use of a Deceptive Term,” in Sontheimer and Kulke (1991), 13.

¹² Percival Spear, cited in Ronald Inden, *Imagining India* (Bloomington: Indiana University Press, 2000), 85.

¹³ Arvind Sharma, “On Hindu, Hindustan, Hinduism and Hindutva,” *Numen*, Vol. 49 (2002), 7.

¹⁴ Thapar (1989), 216.

¹⁵ *Ibid.*, 216.

¹⁶ See Inden (2000), chapter 3, for the use of metaphors by Europeans to describe Hinduism.

¹⁷ P.J. Marshall, “Introduction,” in Marshall ed., *The British Discovery of Hinduism in the Eighteenth Century* (Cambridge: Cambridge University Press, 1970), 20.

upon “contemporary Western understandings of the Judeo-Christian traditions.”¹⁸

The search by Hindu intellectuals for a more pure form of Hinduism was initiated by Rammohun Roy (1772-1833), who is recognized as a seminal figure in the reform of Hinduism and hailed as the ‘father’ of modern India. Roy, who was a passionate critic of polytheism, idolatry and practices like *sati*, identified the Vedas and Upanishads as the true sources of Hinduism. He writes, “The whole body of Hindu Theology, Law, and Literature, is contained in the Veds, which are affirmed to be coeval with the creation... But from its being concealed within the dark curtain of the Sungscrit language, and the Brahmins permitting themselves alone to interpret, or even to touch any book of the kind, the Vedant, although perpetually quoted, is little known to the public: and the practice of few Hindoos indeed bears the least accordance with its precepts.”¹⁹ By translating the Sanskrit texts into Bengali, Roy wanted to strike a blow against those who “prefer custom and fashion to the authorities of their scriptures, and therefore continue, under the form of religious devotion, to practice a system which destroys, to the utmost degree, the natural texture of society, and prescribed crimes of the most heinous nature...”²⁰

This ‘cleansing’ of Hinduism and an adoption of, what Thapar has referred to as, the Semitic model would be a recurrent theme among Hindu reformers in the nineteenth century and later. According to Frykenberg, Indian reformers and leaders from Roy to Jawaharlal Nehru used the terms Hindu and Hinduism in the ‘Brahminical’ or ‘classical’ sense. Ashis Nandy et al describe the primary feature of the “new Hinduism” of the nineteenth century thus: “[I]t defensively rejected or devalued the little cultures of India as so many indices of the country’s backwardness and as prime candidates for integration within the Hindu/national mainstream. Instead, the new Hindus sought to chalk out a new pan-Indian religion called Hinduism that would be primarily classical, Brahmanic, Vedantic and, therefore, not an embarrassment to the modern or semi-modern Indians in touch with the more ‘civilized’ parts of the world.”²¹

The brief discussion of the genealogy of the term ‘Hinduism’ makes it apparent that the Supreme Court was entering into a contested terrain when it attempted to define Hinduism. As Arvind Sharma puts it in an introduction to a recent anthology on Hinduism, “The problem of defining Hinduism has been endemic in the study of Hinduism since the term Hinduism was coined and introduced early in the nineteenth century. It has,

¹⁸ King (1999), 166.

¹⁹ Bruce Carlisle Robertson ed., *The Essential Writings of Raja Rammohun Roy* (Delhi: Oxford University Press, 1999), 3.

²⁰ *Ibid.*, 36-37.

²¹ Ashis Nandy, Shikha Trivedy, Shail Mayaram, Achut Yagnik, *Creating a Nationality: The Ramjanambhumi Movement and Fear of the Self* (Delhi: Oxford University Press, 2002), 58.

however, increasingly become more acute.”²² In the subsequent discussion of the judicial discourse on Hinduism, I intend to show that the Court assigned a critical role to many of the dominant assumptions of the reformist and neo-Hinduism in the nineteenth and early twentieth century.

At this point it might be useful to make a distinction between two strands of reformist Hinduism: an ‘inclusivist’ and an ‘exclusivist’ model. The most prominent proponents of an inclusivist Hinduism were Swami Vivekananda (1863-1902) and Sarvepalli Radhakrishnan (1888-1975). Vivekananda, the founder of the Ramakrishna Mission, probably did most to shape the discourse on Hinduism in modern India as well as popularise Hinduism in the West. Radhakrishnan, a distinguished philosopher who taught at Oxford²³ and later became President of India (1962-67), would develop many of Vivekananda’s ideas on Hinduism. Both of them forcefully argued for Hinduism as a universal and tolerant religion founded on the Vedas. These ideas would play a central role in the Court’s understanding of Hinduism. However, I argue that the Court, by adopting the inclusivist model of Hinduism, also contributed to the construction of a homogenous Hinduism which was inimical to variations in beliefs, practices and doctrines. In this paradoxical sense the Court’s understanding of Hinduism overlapped with the exclusivist strand associated with the founder of contemporary Hindu nationalism, Vinayak Damodar Savarkar (1883-1966) and his notion of ‘Hindutva’ (Hinduness), a strand which I will discuss at greater length below. Before turning to an analysis of the court’s definition of Hinduism I will briefly outline the inclusivist and the exclusivist models of Hinduism. One must keep in mind, however, that there are significant common features in the models which contributed in part to the Court’s conflation of Hinduism with Hindutva.

Inclusivist Hinduism

The Frenchman Francois Bernier, who visited India between 1656 and 1668, wrote of the pluralism of Hinduism and tolerance of the Hindus.²⁴ However, the conceptual framework for the inclusive model of Hinduism was laid at the end of the nineteenth century by the eminent Oxford Sanskritist Monier Monier-Williams (1819-1899).²⁵ In his influential book, *Religious Thought and Life in India*, Monier-Williams writes, “It [Hinduism] claims to be the one religion of humanity, of human nature, of the entire world. It cares not to oppose the progress of any other system. For it has no difficulty in including all other religions within its all-embracing

²² Arvind Sharma, “What is Hinduism?” in Arvind Sharma ed., *The Study of Hinduism* (Columbia: University of South Carolina Press, 2003), 1-2.

²³ Radhakrishnan taught Eastern religion and ethics at Oxford from 1936-52. He also held teaching and administrative positions at Calcutta University, Mysore University and Benaras Hindu University.

²⁴ Francois Bernier, *Travels in the Mogul Empire 1656-1668* (New Delhi: Oriental Reprint, 1983).

²⁵ Sir Monier Monier-Williams was in 1860 elected the Boden Professor of Sanskrit at Oxford edging out Max Mueller to the prestigious post. One of Monier-Williams’s major achievements was the establishment of the Indian Institute at Oxford.

arms and ever-widening fold.”²⁶ He describes the Hindu religion as one “based on the idea of universal receptivity” which has “first borne with and then, so to speak, swallowed digested, and assimilated something from all creeds.”²⁷ In a more recent reformulation, the German Indologist, Paul Hacker, argued that the inclusivism (*Inklusivismus*) associated with Hinduism is often confused with tolerance. According to Hacker, inclusivism “consists in claiming for, and thus including in, one’s own religion what really belongs to an alien sect.”²⁸ He points out that “it would perhaps be more accurate to speak of inclusivism in many cases where we are inclined to see Hindu tolerance.”²⁹ Hacker singles out Vivekananda and Radhakrishnan as the most notable practitioners of this method of inclusivism. Both Vivekananda and Radhakrishnan were also the leading proponents of Advaita Vedanta.³⁰ Though Hacker’s additional assertion that there was inclusivism rather than tolerance in Indian tradition has been contested, his claim about the displacement of tolerance by inclusivism is useful in discussing the thoughts of Vivekananda and Radhakrishnan.

Perhaps the most powerful articulation of the inclusivist model of Hinduism was Vivekananda’s now legendary address at the Parliament of Religions in Chicago in 1893 where he declared: “I am proud to belong to a religion which has taught the world both tolerance and universal acceptance. We believe not only in universal toleration but we accept all religions as true.”³¹ This theme of the tolerance and universality of Hinduism, specifically Vedantic Hinduism, would find pride of place in several of Vivekananda’s speeches. At yet another lecture in America, Vivekananda clearly outlined his idea of an inclusivist Hinduism: “Ours, as I have said, is the universal religion. It is *inclusive* enough, it is broad enough to include all ideals. All the ideals of religion that already exist in the world can be immediately included, and we can patiently wait for all the ideals that are to come in the future to be taken in the same fashion, embraced in the infinite arms of the religion of the Vedanta (*italics added*).”³² Thus, the infinite capacity to accommodate differences and dissent becomes the principal feature of Hinduism.

“[S]ect after sect arose in India and seemed to shake the religion of the Vedas to its very foundations, but like the waters of the seashore in a tremendous earthquake it receded only for a while, only to return in all-absorbing flood, a thousand times

²⁶ Monier Monier-Williams, *Religious Thought and Life in India* (New Delhi: Oriental Books Reprint Corp, 1974), 6.

²⁷ *Ibid.*, 57.

²⁸ Hacker, cited in Wilhelm Halbfass, *India and Europe: An Essay in Understanding* (Albany: SUNY Press, 1988), 404-5. The original essay in German appears in Hacker, “Inklusivismus,” in G. Oberhammer ed., *Eine Indische Denkform* (Vienna: 1983).

²⁹ Halbfass (1988), 405.

³⁰ See *Ibid.*, 408-409, and Robert N. Minor, “Sarvepalli Radhakrishnan and ‘Hinduism’: Defined and Defended,” in Robert Baird ed., *Religion in Modern India* (Delhi: Manohar, 1991).

³¹ Swami Vivekananda, *The Collected Works of Swami Vivekananda I* (Calcutta: Advaita Ashrama, 1973), 1.

³² Vivekananda (1973), *Collected Works III*, 251-52.

more vigorous, and when the tumult of the rush was over, these sects were all sucked in, absorbed, and assimilated into the immense body of the mother faith.”³³

According to Vivekananda, the Hindu religion was founded on the Vedas which “are a series of books which, to our minds, contain the essence of all religion.” More importantly he believed that only Vedanta could be the basis of a universal religion. “[O]ur claim is that the Vedanta only can be the universal religion, that it is already the existing universal religion in the world, because it teaches principles and not persons. No religion built upon a person can be taken up as a type by all the races of mankind... Now, the Vedantic religion does not require any such personal authority. Its sanction is the eternal nature of man, its ethics are based upon the eternal spiritual solidarity of man, already existing, already attained and not to be attained.”³⁴

Despite his professed openness to other religions, Vivekananda believed in the superiority of Hinduism. At a speech in Madras, he said, “Ours is the religion of which Buddhism with all its greatness is as rebel child, and of which Christianity is a very patchy imitation.”³⁵ Harking back to the theme that Vedantic religion represented eternal truths, Vivekananda emphasized that only Hinduism had the potential of being a universal religion: “You hear claims made by every religion as being the universal religion of the world. Let me tell you in the first place that perhaps there never will be such a thing, but if there is a religion which can lay claim to be that, it is only our religion and no other, because every other religion depends on some person or persons... But the truths of our religion, although we have persons by the score, do not depend upon them.”³⁶

For Vivekananda, the Vedas were also the fundamental unifying force among Hindus belonging to different sects. Addressing a gathering in Lahore in 1897 Vivekananda spoke on ‘The Common Bases of Hinduism’: “Perhaps all who are here will agree on the first point that we believe the Vedas to be the eternal teachings of the secrets of religion. We all believe that this holy literature is without beginning and without end, coeval with nature, which is without beginning and without end; and that all our religious differences, all our religious struggles must end when we stand in the presence of that holy book; we are all agreed that this is the last court of appeal in all our spiritual differences.”³⁷

In keeping with his belief in a higher religion, Vivekananda castigated, as Tapan Raychaudhuri puts it, the “mindless imbecilities of popular Hinduism.”³⁸ To quote once again from Vivekananda’s speech in Madras,

³³ Vivekananda (1973), *Collected Works* I, 6.

³⁴ Vivekananda (1973), *Collected Works* III, 250.

³⁵ *Ibid.*, 275.

³⁶ *Ibid.*, 279-80.

³⁷ *Ibid.*, 372.

³⁸ Tapan Raychaudhuri, “Swami Vivekananda’s Construction of Hinduism,” in William Radice ed., *Swami Vivekananda and the Modernization of Hinduism* (Delhi: Oxford University Press, 1998), 12.

“The fact is that we have many superstitions, many bad spots and sores on our body – these have to excised, cut off, and destroyed – but these do not destroy our religion, our national life, our spirituality. Every principle of religion is safe, and the sooner these black spots are purged away, the better the principles will shine, the more gloriously.”³⁹

Many of Vivekananda’s ideas on Hinduism, especially its capacity to assimilate, its unique role as a universal religion and the centrality of the Vedas, would be distilled by Radhakrishnan to define Hinduism as a “way of life” rather than a religion. Radhakrishnan has written how as a young student he was profoundly affected by Vivekananda and his mentor Ramakrishna Paramahansa. In the famous Upton lectures at Oxford in 1926, Radhakrishnan famously described Hinduism thus: “Hinduism is more a *way of life* than a form of thought. While it gives absolute liberty in the world of thought it enjoins a strict code of practice. The theist and the atheist, the sceptic and the agnostic may all be Hindus if they accept the Hindu system of culture and life (italics added).”⁴⁰ Radhakrishnan goes on to compare Hinduism to a “fellowship” by saying, “Hinduism is not a sect but a fellowship of all who accept the law of right and earnestly seek for the truth.”⁴¹

Radhakrishnan links the very difficulty of defining Hinduism or finding common characteristics to its ability to assimilate and absorb external influences. “The ease with which Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contact is as great as the difficulty we feel in finding common features binding together its different forms.”⁴² This assimilative quality of Hinduism, according to Radhakrishnan, has enabled it to withstand the onslaught of different people and ideas that have poured into India since the earliest times. “Though peoples of different races and cultures have been pouring into India from the dawn of history, Hinduism has been able to maintain its supremacy, and even the proselytising creeds backed by political power have not been able to coerce the large majority of Indians to their views.”⁴³ Thus Hinduism has “come to be a tapestry of the most variegated tissues and almost endless diversity of hues.”⁴⁴

For Radhakrishnan, like Vivekananda, the Vedas and Vedanta remained the spiritual core of Hinduism through its entire history of development. Though Hinduism has continued to develop and grow through the ages, it is “not to be dismissed as a mere flow and strife of opinions, for it represents a

³⁹ Vivekananda (1973), *Collected Works* III, 279.

⁴⁰ S. Radhakrishnan, *The Hindu View of Life* (New York: Macmillan, 1957), 77. Radhakrishnan makes a similar statement in the same series of lectures: “While fixed intellectual beliefs mark off one religion from another, Hinduism sets itself no such limits. Intellect is subordinated to intuition, dogma to experience, outer expression to inward realisation. Religion is not the acceptance of academic abstraction or the celebration of ceremonies, but a *kind of life* or experience (italics added).” Radhakrishnan (1957), 15.

⁴¹ *Ibid.*, 77.

⁴² *Ibid.*, 12.

⁴³ *Ibid.*, 12-13.

⁴⁴ *Ibid.*, 20.

steady growth of insight, since every form of Hinduism and every stage of growth is related to the common background of the Vedanta.”⁴⁵ He writes that “those parts of the new faith which are not in conformity to the Vedic Canon tend to be subordinated and gradually dropped out.”⁴⁶ Again like Vivekananda, Radhakrishnan believed that in spite of the surface differences there was a fundamental unity among Hindus. The inchoate nature of Hinduism does not deter Radhakrishnan from asserting, “In spite of the fact that Hinduism has no common creed and its worship no fixed form, it has bound together multitudinous sects and devotions into a common scheme.”⁴⁷

Exclusivist Hinduism

The term ‘neo-Hinduism’ has been used to describe the thought and philosophy of a whole range of Hindu reformers and ideologues, including Bankimchandra Chattopadhyay, Swami Dayanand, Vivekananda, Radhakrishnan and Mohandas Gandhi. According to Paul Hacker, neo-Hinduism was characterized by an invoking of the ‘Hindu tradition’ in response to the encounter with the West. However, a crucial element of neo-Hinduism was a “reinterpretation” of tradition.⁴⁸ Some scholars have argued that the differences among the neo-Hindus were marginal while others are of the view that there were fundamental differences in the ideology of the several important figures clubbed under the neo-Hindu label.⁴⁹ My view is that a broad distinction can be made between an inclusivist and an exclusivist discourse about Hinduism. At the same time the reader should keep in mind that inclusivism and exclusivism are not watertight categories. Some of the important elements for the framework of the exclusivist formulation of Hinduism were provided by nineteenth century figures such as Dayanand (1824-1883) and Chattopadhyay. Two features of Chattopadhyay and Dayanand’s work would play a significant role in Savarkar’s Hindutva ideology: the idea of a Hindu *rashtra* or nation (as opposed to a religion or civilization) and the distinction between a ‘Hindu’ (which included Buddhists, Jains and Sikhs) and the ‘Other’ represented by Muslims and Christians. As several recent studies have shown

⁴⁵ Ibid., 22.

⁴⁶ Ibid., 23.

⁴⁷ Ibid., 54.

⁴⁸ Hacker, cited in Halbfass (1988), 220.

⁴⁹ For instance there are some like Ashis Nandy who believe that Dayanand, Chattopadhyay and Vivekananda had similar world views. See Ashis Nandy, *The Intimate Enemy: Loss and Recovery of Self Under Colonialism* (New Delhi: Oxford University Press, 1992), 22-26. However, there are other scholars who believe that figures such as Vivekananda and Dayanand had fundamentally different ideas on Hinduism. See, for example, Shamita Basu, *Religious Revivalism as Nationalist Discourse: Swami Vivekananda and New Hinduism in Nineteenth Century Bengal* (New Delhi: Oxford University Press, 2002), 127: “The Swami [Vivekananda] wanted to advocate a form of Hinduism that was a far cry from the parochial version of the religion which the orthodox Hindu leadership wanted to popularize. Vivekananda followed the model of the Reformation in depoliticizing Hinduism, confining in a Lutheran manner the spiritual to the private sphere of life.”

Chattopadhyay was a crucial figure in the nineteenth century response to colonial rule.⁵⁰ Besides his novels like *Anandamath*, which is famous for the celebrated patriotic hymn ‘Bande Mataram’ and its anti-Muslim rhetoric,⁵¹ Chattopadhyay contributed significantly to laying the ideological foundations of a “national religion” based on Hindu ideals. In one of his later works, *Krsnacaritra*, Chattopadhyay sought to reinterpret Krishna as a “respectable, righteous, didactic, ‘hard’ god, protecting the glories of Hinduism.”⁵² Dayanand, on the other hand, was much more involved in the actual reform and organization of Hinduism. He believed that a regeneration of the Hindu community was possible by going back to the Vedic texts and with this in mind he founded the *Arya Samaj* in 1875. Daniel Gold has observed that the Samaj “presents one of the closest parallels to Western fundamentalism of all the Indian groups... a definite religious group with its own leaders, guiding texts and sacraments.”⁵³ At the same time, Dayanand made a concerted effort to establish the superiority of Vedic Hinduism⁵⁴ vis-a-vis Islam and Christianity⁵⁵ in works like the *Satyarth Prakash*⁵⁶ as well as to mobilize Hindus around issues such as ‘reconversion’ (*suddhi*), cow protection and the importance for nationalism of the Hindi language. If Chattopadhyay and Dayanand foreshadowed exclusivist Hinduism, then undoubtedly the locus classicus of this variety of Hinduism was Savarkar’s *Hindutva*. Savarkar, who was sent to jail by the British government in 1910 for revolutionary activities, wrote *Hindutva* while in prison.⁵⁷ The treatise, which was published in 1923, was the product of a period when “the arrival of pan-Indian electoral politics had created a space for a political definition of the Hindus that could be more exclusivist.”⁵⁸ Like many Hindu

⁵⁰ See, for example, Partha Chatterjee, *Nationalist Thought and the Colonial World* (Minneapolis: University of Minnesota Press, 1993) and Sudipta Kaviraj, *The Unhappy Consciousness: Bankimchandra Chattopadhyay and the Formation of Nationalist Discourse in India* (New Delhi: Oxford University Press, 1998).

⁵¹ See Tanika Sarkar, “Imagining Hindurashtra: The Hindu and the Muslim in Bankim Chandra’s Writings,” in David Ludden ed., *Contesting the Nation: Religion, Community, and the Politics of Democracy in India* (Philadelphia: University of Pennsylvania Press, 1996).

⁵² Nandy (1992), 24.

⁵³ Daniel Gold, “Organized Hinduism: From Vedic Truth to Hindu Nation,” in Martin Marty and R.S. Appleby eds., *Fundamentalisms Observed* (Chicago: University of Chicago Press, 1991), 534.

⁵⁴ For Dayanand’s relationship to the Vedas see Arvind Sharma, “Swami Dayananda Sarasvati and Vedic Authority,” in Baird (1991). See also Kenneth W. Jones, *Arya Dharm: Hindu Consciousness in Nineteenth-Century Punjab* (Berkeley: University of California Press, 1976).

⁵⁵ J.T.F. Jordens, *Dayananda Saraswati: His Life and Ideas* (Delhi: Oxford University Press, 1978), 279.

⁵⁶ There are two editions of the *Satyarth Prakash* – the first edition appeared in 1875 and the second one was composed in the final years of Dayanand’s life. Jordens points out that the second edition was more political and anti-British in tone.

⁵⁷ Savarkar was released from prison in 1924 and subsequently became the president of the Hindu Mahasabha from 1937-1943. Later, he was linked to Mahatma Gandhi’s assassins, Nathuram Godse and Narayan Apte, but the charges against him were never proved.

⁵⁸ Nandy et al (2002), 67.

intellectuals before him, Savarkar, too, engaged with the problem of how to define 'Hinduism' and 'Hindu'. In tracing the origin of the term 'Hindu', Savarkar refused to accept standard interpretations that held that the term was coined by outsiders to describe the people living across the Indus river. In his seminal text, *Hindutva*, he wrote, "Thus Hindu would be the name that this land and the people that inhabited it bore from time immemorial that even the Vedic name Sindhu is but a later and secondary form of it."⁵⁹

The key innovation by Savarkar was that "the concept of Hindu is given a predominantly territorial component, a concept of holy land is specifically introduced in a fashion that would create a stratarchy of Indians."⁶⁰ "We have found," Savarkar writes, "the first important essential qualification of a Hindu is that to him the land that extends from Sindhu to Sindhu is the Fatherland (Pitribhu), the Motherland (Matribhu) the land of his patriarchs and forefathers."⁶¹ More importantly, Savarkar specified that the "Dharma of a Hindu being so completely identified with the land of the Hindus, this land to him is not only a Pitribhu but a Punyabhū, not only a fatherland but a holyland."⁶² This meant that Muslims and Christians, who might have been born in the "common Fatherland", could not be regarded as Hindus: "For though Hindustan to them is Fatherland as to any other Hindu yet it is not to them a Holyland too. Their Holyland is far off in Arabia or Palestine."⁶³

Savarkar coined the word 'Hindutva' to substitute for Hinduism which, in his book, "meant a theory or code more or less based on spiritual or religious dogma or system."⁶⁴ According to Savarkar it was of paramount importance to distinguish between Hinduism and Hindutva: "Hinduism is only a derivative, a fraction, a part of Hindutva... Hindutva embraces all the departments of thought and activity of the whole Being of our Hindu race."⁶⁵ Savarkar elaborated this notion by ascribing three "essentials" to Hindutva – a common nation (*rashtra*), a common race (*jati*) and a common civilization (*sanskriti*). This meant that religious belief and practice was ascribed a secondary status in Savarkar's conception of Hindutva. Hence, Chetan Bhatt observes, "The displacement of 'Hinduism' by Hindutva represented a substitutionist logic that strictly demoted religion or religious belief. This was both an essential step in his primarily non-religious, territorial and racial conception of Hindutva and its most contradictory, because at some stage, Muslims and Christians had to be excluded from the Hindu nation precisely because of Savarkar's view of the radically different nature of their religion that was seen as coextensive with their identities."⁶⁶

⁵⁹ V.D. Savarkar, *Hindutva: Who is a Hindu?* (Bombay: Veer Savarkar Prakashan. 1969), 10.

⁶⁰ Nandy et al (2002), 67.

⁶¹ Savarkar (1969), 110.

⁶² Ibid., 111.

⁶³ Ibid., 113.

⁶⁴ Ibid., 4

⁶⁵ Ibid., 3-4.

⁶⁶ Chetan Bhatt, *Hindu Nationalism: Origins, Ideologies and Modern Myths* (Oxford and New York: Berg, 2001), 85.

The exclusivist logic of Savarkar was extended by M.S. Golwalkar. He was the most prominent ideologue of the Rashtriya Swayamsevak Sangh (RSS).⁶⁷ Founded in 1925, the RSS aimed to revitalize India's cultural life by organizing branches (*sakhas*) where the country's youth could learn discipline and devotion to the nation. In 1938, two years after he became *sarsanghchalak* (supreme director) of the RSS, Golwalkar published *We or Our Nationhood Defined*. Regarding the origins of the Hindus, Golwalkar declared in his book that Hindus came "into this land [Hindusthan] from nowhere, but are indigenous children of the soil always, from times immemorial and are natural masters of the country."⁶⁸ Borrowing from extant notions of nationalism, Golwalkar stressed that the 'Hindu' nation was founded on a defined territory, race, religion, culture and language. This concept of the Hindu nation was marked by exclusivity: "All those not belonging to the national i.e. Hindu Race, Religion, Culture and Language naturally fall out of the pale of 'National' Life."⁶⁹ Golwalkar's message to the non-Hindus was unambiguous and draconian:

The non-Hindu peoples in Hindusthan must either adopt the Hindu culture and language, must learn to respect and hold in reverence Hindu religion, must entertain no idea but those of glorification of the Hindu race and culture i.e. they must not only give up their attitude of intolerance and ungratefulness towards this land and its age-long traditions but must also cultivate the positive attitude of love and devotion instead — in one word they, must cease to be foreigners, or may stay in the country wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment – not even citizens' rights.⁷⁰

In keeping with this line of thinking, Golwalkar made an ominous reference to the example of Nazi Germany and how it had shown that it was impossible "for Races and cultures, having differences to the root, to be assimilated into one united whole, a good lesson for use in Hindusthan to learn and profit by."⁷¹

Balraj Madhok is a figure of the next generation of Hindu nationalism. His interpretation of Hindutva is constructed as a leader of the Bharatiya Jan Sangh party.⁷² Madhok was motivated by a desire to widen the appeal of Hindutva. His thinking is affected by post-nationalist, post-independence electoral and party competition. The Jan Sangh,⁷³ which was the predecessor

⁶⁷ For details about the RSS see Walter Anderson and S. Damle, *Brotherhood in Saffron* (Boulder: Westview Press, 1987) and Tapan Basu, Pradip Datta, Sumit Sarkar, Tanika Sarkar, Sambuddha Sen, *Khaki Shorts and Saffron Flags: A Critique of the Hindu Right* (New Delhi: Orient Longman, 1993), ch. 2.

⁶⁸ M.S. Golwalkar, *We or Our Nationhood Defined* (Nagpur: Bharat Prakashan, 1947), 13

⁶⁹ *Ibid.*, 52.

⁷⁰ *Ibid.*, 55-56.

⁷¹ *Ibid.*, 43.

⁷² Madhok, a former president of Jan Sangh, quit the party in 1973 after a bitter power struggle.

⁷³ For a history of the Jan Sangh, see Bruce Graham, *Hindu Nationalism and Indian Politics: The Origins and Development of the Bharatiya Jana Sangh* (Cambridge: Cambridge University Press, 1990).

to the Bharatiya Janata Party (BJP), was founded in 1951. Madhok made an effort to downplay Hindutva and to highlight the term ‘Bharatiya’, a Sanskrit word for Indian. He wrote, “At the same time there is no sense in making a fetish of the word Hindu. Instead of forcing it on those who do not like it today, it should be popularized as a synonym of ‘Bharatiya’ in writing and speaking.”⁷⁴ However, he was clear that by the Indian nation he meant Hindu *rashtra*. But at the same time he took a more accommodating approach than Savarkar or Golwalkar by stressing that “Christians and Muslims living in India are also Hindus if India and Indian culture commands their first and foremost allegiance.”⁷⁵ According to Arvind Sharma, this signaled a subtle shift in the understanding of Hindutva: “During the period when the Jan Sangh functioned as a party [1951-1979], the concept of Hindutva underwent an ideological shift. It took the form of identifying India with Hindutva, rather than Hindutva with India.”⁷⁶ Now that the reader has been introduced to the discourse and discursive formations with respect to Hindu, Hinduism, Hindutva and Hindu *rashtra*, the analysis can move on to the Court’s definition and understanding of Hinduism.

The Satsangi case

The first case in independent India in which the Supreme Court famously attempted to define Hinduism was *Yagnapurushdasji v. Muldas*.⁷⁷ The 1966 case involved the Satsangis or followers of Swaminarayan (1780-1830) who claimed that their temples did not fall under the jurisdiction of the Bombay Harijan Temple Entry Act, 1948. The Act provided that every Hindu temple shall be open to Harijans or untouchables. By the time the case reached the Supreme Court via a trial court and the Bombay High Court, the Central Untouchability (Offences) Act of 1955 had already come into effect. The case made by the Satsangis was that the “Swaminarayan sect represents a distinct and separate religious sect unconnected with the Hindus and Hindu religion, and as such, their temples were outside the purview of the said Act”.⁷⁸

The Satsangis claimed separate status on four grounds. First, they argued that Swaminarayan, the founder of the sect, considered himself as Supreme God. Second, it was urged that the Satsangi temples could not be regarded as Hindu temples since they were used to worship Swaminarayan and not any traditional Hindu deity. Third, it was pointed out that the Satsangis propagated the idea that worship of any god other than Swaminarayan was a betrayal of faith. Finally, it was contended that there was a procedure of initiation (*diksha*) into the Swaminarayan sect by which a devotee assumed a distinct and separate identity.

⁷⁴ Balraj Madhok, *Indian Nationalism* (New Delhi: Bharatiya Sahitya Sadan, 1969), 96.

⁷⁵ *Ibid.*, 96.

⁷⁶ Sharma (2002), 24.

⁷⁷ AIR 1966 SC 1119. For a close reading of the case see Galanter (1997), ch. 10.

⁷⁸ *Yagnapurushdasji* at 1121.

The Court rejected the contention of the Satsangis relying primarily on a description of their religious practices by Monier-Williams in his *Religious Thought and Life in India*. Based on its reading of Monier-Williams and reports of the Gazetteer of the Bombay Presidency, the Court concluded: “In our opinion, the plea raised by the appellants that the Satsangis who follow the Swaminarayan sect form a separate and distinct community different from the Hindu community and their religion is a distinct and separate religion different from Hindu religion is entirely misconceived.”⁷⁹ However, the examination of the religious practices of the Satsangis was somewhat incidental in the Court’s ruling.

Yagnapurushdasji was far more critical for the Supreme Court’s construction of Hinduism, a construction that has since become hegemonic in judicial discourse. Writing for the Court, Chief Justice P.B. Gajendragadkar — who had already authored some of the most important judgments on the question of freedom of religion — proceeded to enquire “what are the distinctive features of Hindu religion.”⁸⁰ At the same time, he admitted that the question “appears to be somewhat inappropriate within the limits of judicial enquiry in a court of law”,⁸¹ but he did not allow that thought to deter him. Drawing primarily from English language sources, the Court put forward the view that Hinduism was “impossible” to define: “When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one God; it does not subscribe to any one dogma; it does not believe in one philosophic concept; it does not follow any one set of religious rites.” Confronted with this amorphous entity, the Court concluded, “[I]t [Hinduism] does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a *way of life* and nothing more (italics added).”⁸²

Once the civilizational or cultural view of Hinduism was posited it was not difficult for the Court to construct an all-encompassing version of Hinduism that included a variety of creeds and sects. Hence, any reform movements, including Buddhism, Jainism and Sikhism, were seen as merely different sects within Hinduism.

The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought elements of corruption and superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir started Jainism; Basava became the founder of Lingayat religion, Dhyaneswar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic forms. If we study the

⁷⁹ Ibid., 1134.

⁸⁰ Ibid., 1127.

⁸¹ Ibid., 1128.

⁸² Ibid., 1128.

teachings of these saints and religious reformers, we would notice an amount of divergence in their respective views: but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion.⁸³

Gajendragadkar's view is, in fact, enshrined in the Constitution where Explanation II appended to Article 25 says that the "reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion". What is noteworthy is that the Court could well have decided *Yagnapurushdasji* without going into a detailed exegesis of Hinduism. As Marc Galanter has pointed out in his analysis of *Yagnapurushdasji*, the Court could have decided the case with reference to Article 25(2)(b) of the Constitution, which empowers the state to overcome caste and denominational barriers within Hinduism.⁸⁴ In any case in an earlier judgment the Court had said temple-entry acts prevail over denominational claims to exclude outsiders.⁸⁵

In *Yagnapurushdasji*, the Court used a variety of sources to define Hinduism. Robert Baird describes the Court's reasoning thus: "All of the authorities to whom appeal is made stress the wide range of Hindu belief and practice. That which had been the obstacle to constructing a model of Hinduism which would fit the concrete data is turned into one of its major characteristics — it is inclusive."⁸⁶ Radhakrishnan in particular plays a crucial role in shaping the Court's conception of Hinduism.

At the outset, Gajendragadkar quotes a question posed by Radhakrishnan to get at a definition of Hinduism: "[T]o many Hinduism seems to be a name without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical expression?"⁸⁷ To this question, the Court offers a geographical solution provided by Radhakrishnan. "The Hindu civilization is so called since its original founders or earliest followers occupied the territory drained by the Sindhu (the Indus) river system corresponding to the North-West Frontier Province and the Punjab."⁸⁸ According to the Court, Radhakrishnan's definition of Hindu implied residence in a well-defined geographical area. "Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother."⁸⁹

The next step in the Court's construction of Hinduism is the stress on its assimilative and tolerant character, a dominant idea in Radhakrishnan's conception of Hinduism: "Naturally enough it was realized by Hindu religion that from the very beginning of its career that truth was

⁸³ *Yagnapurushdasji* at 1130.

⁸⁴ Galanter (1997), 247.

⁸⁵ *Venkatramana Devaru v. State of Mysore*, AIR 1958 SC 255.

⁸⁶ Robert D. Baird, "On Defining 'Hinduism' as a Religious and Legal Category," in Baird ed., *Religion and Law in Independent India* (New Delhi: Manohar, 1993), 50.

⁸⁷ *Yagnapurushdasji* at 1128.

⁸⁸ *Ibid*, 1128.

⁸⁹ *Ibid.*, 1128.

many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponent's point of view."⁹⁰ The Court also mentions Monier-William's passage on Hinduism's ability to assimilate "something from all creeds",⁹¹ which has already been cited in this paper.

In formulating this overarching, all-embracing Hinduism, the Court privileges another of Radhakrishnan's major ideas: the "acceptance of the Vedas as sole foundation of the Hindu philosophy." Thus Gajendragadkar writes, "Beneath the diversity of philosophic thoughts, concepts and ideas expressed by Hindu philosophers... lie certain broad concepts which can be treated as basic. The first among these basic concepts is the acceptance of the Veda as the highest authority in religious and philosophic matters."⁹² The Court even comes up with a working definition of Hinduism as formulated by B.G. Tilak: "Acceptance of the Vedas with reverence; recognition of the fact that the means to salvation are diverse; and realization of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion."⁹³

The importance of *Yagnapurushdasji* was that the Court was interpreting Hinduism as an inclusivist religion drawing heavily from the ideas of Radhakrishnan and his intellectual predecessors. In this sort of usage, as noted earlier, certain features of Hinduism are most important: tolerance, universality, a classical core and a search for a fundamental unity. The Court's views on Hinduism and indeed its inclusive nature recurred in subsequent judgements. In several important later judgements, the Supreme Court relied on the construction of Hinduism as elaborated in *Yagnapurushdasji*. For instance, in *Ganpat v. Returning Officer* the Court declares: "[I]t is necessary to remember that Hinduism is a very broad based religion. In fact some people take the view that it is not a religion at all on the ground that there is no founder and no one sacred book for the Hindus. This, of course, is a very narrow view merely based on the comparison between Hinduism on the one side and Islam and Christianity on the other. But one knows that Hinduism through the ages has absorbed or accommodated many different practices, religious as well as secular, and also different faiths."⁹⁴

The inclusive model of Hinduism has also been used to determine who qualifies as a Hindu for legal purposes. As Baird notes with respect to the application of personal law, the Court has held that the Jains,⁹⁵ who consider themselves distinct from Hinduism, and the Lingayats,⁹⁶ a 'lower caste' within Hinduism, would be treated as Hindus. Since

⁹⁰ Ibid., 1129.

⁹¹ Ibid., 1129.

⁹² Ibid., 1130.

⁹³ Ibid. 1131.

⁹⁴ AIR 1975 SC 423.

⁹⁵ *Shuganchand v. Prakash Chand*, AIR 1967 SC 506.

⁹⁶ *Guramma v. Mallappa*, AIR 1964 SC 520.

Yagnapurushdasji, claims put forward by different Hindu sects to be regarded as a separate religion have not found favour with the Court. Among the more prominent cases was the denial of the status of a separate religion status to the Arya Samaj⁹⁷ and Ramakrishna Mission.⁹⁸ Let us briefly examine the Ramakrishna Mission case which was interesting for two reasons: first the Calcutta High Court accepted the claim of the Mission to be a separate religion, but the Supreme Court eventually reversed the decision; and second, the Mission's argument was that Hinduism did not qualify as a universal religion. Unlike the Satsangi case where the entry into temples was at stake, the Ramakrishna Mission case revolved around the limits of state action with regard to institutions run by the Mission. In settling the case, the Court was forced to examine the doctrinal content of Ramakrishna and Vivekananda's teachings to decide whether their followers could be classified as Hindus.

Ramakrishna Mission Case

In the Ramakrishna Mission (RKM) case the issue at hand was the West Bengal government's right to interfere in the administration of and appointment of teachers to in educational institutions run by the RKM. When the case first came up for hearing before a single judge of the Calcutta High Court and subsequently before a division bench,⁹⁹ the lawyers representing RKM argued that 'Ramakrishnaism' was a minority religion and hence covered by Article 30,¹⁰⁰ which guarantees minorities control over educational institutions. In fact, the lawyers turned around the Court's model of inclusivism elaborated in *Yagnapurushdasji* and argued that 'Ramakrishnaism' was a "world religion" while Hinduism was not.

The cult or religion of Shri Ramakrishna Paramahansadeb is that all beings are the manifestations of God and all religions are but different paths of reaching God... There is no necessity of one surrendering his own religion, be he a Hindu or a Christian or Muslim or Jew in order to be a follower of the cult or religion of Shri Ramakrishna... Thus in fact, Thakur Shri Ramakrishna preached a World Religion which is quite different from all other religions.¹⁰¹

The argument by the RKM lawyers was that Ramakrishna founded a "universal" religion which was "meant not for the members of any particular caste, creed or religion but for the entire mankind."¹⁰²

⁹⁷ *D.A.V. College, Batinda v. State of Punjab*, AIR 1971 SC 1731.

⁹⁸ *Bramchari Sidheshwar Shai v. State of West Bengal*, AIR 1995 SC 2089.

⁹⁹ For an analysis of how the Calcutta High Court dealt with the case, see Brian K. Smith, "How Not to be a Hindu: The Case of the Ramakrishna Mission," in Baird (1993).

¹⁰⁰ Article 30 reads: (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

¹⁰¹ 2 Calcutta L.J. (1983), 348

¹⁰² Cited in Smith (1993), 342.

The RKM lawyers pointed to the life of Ramakrishna and his famed experimentation with different religions as the prime example of his universal beliefs: “Sri Ramakrishna practiced Hinduism and particularly Bhakti Yoga — the Path of Love. He, however, did not stop there and instead of confining himself within Hinduism and experimenting with other paths according to the tenets of Hinduism, embarked upon altogether novel experiments in accordance with the principles of other religions.”¹⁰³ Thus Ramakrishna for a brief period “practiced Islam as a devout Muslim” and had visions of Christ when he went into a trance.

Contrary to the Satsangi ruling, the Calcutta High Court agreed that as compared to Hinduism Ramakrishnaism was far more inclusive and labelled it as a “Religion Universal.” The Court declared, “In order to be a follower of Sri Ramakrishna, non-Hindus are not required to embrace Hinduism and to undergo *Suddhi* or other form of purification. He could continue to profess and practice his own religion and at the same time be a follower of Sri Ramakrishna’s faith.”¹⁰⁴ Contrasting ‘Ramakrishnaism’ with Hinduism, the Court said: “Hindu religion does never admit any person professing another faith and religion such as Muslim, Christian or Buddhism etc. in it unless such person gives up his religion to embrace Hinduism.”¹⁰⁵ However, a follower of Ramakrishna is catholic in his beliefs: “A traditional Hindu claims to be a Hindu and Hindu only, and believes in the Vedas only, and not in the scriptures of any other religion;... But a follower of the cult or religion of Shri Ramakrishna, coming originally from the Hindu fold, though a Hindu, claims to be something more at the same time. As a follower of Shri Ramakrishna’s Religion Universal, along with the Vedas, he accepts also the Holy Koran, the Holy Bible and all other religious scriptures to be true.”¹⁰⁶ Further, the Court contended that Ramakrishnaites reject an “integral part of Hindu religion” — the caste system.¹⁰⁷

In light of the Satsangi ruling and specifically Gajendragadkar’s mention of Ramakrishna and Vivekananda as reformers working within the ambit of Hinduism, there was every chance that the Calcutta High Court judgment would be appealed in the Supreme Court. Indeed ten years after the high court ruling, the Supreme Court overturned the ruling. In an article written well before the Supreme Court judgment Baird correctly predicted: “The inclusive model of Hinduism utilized in the Satsangi and succeeding cases could have accommodated the followers of Ramakrishna as well. But, in the interests of preserving the religious control of the College, the Calcutta High Court modified that model so that the Ramakrishnaites became distinct... But in the light of Supreme Court statements on Hinduism as a religious category it is difficult to see the Supreme Court affirming this decision.”¹⁰⁸

¹⁰³ Ibid., 342.

¹⁰⁴ 1 Calcutta L.J. (1986), 151.

¹⁰⁵ 2 Calcutta L.J. 348.

¹⁰⁶ Ibid., 337.

¹⁰⁷ Ibid., 394.

¹⁰⁸ Baird (1993), 58.

Not surprisingly, the Supreme Court based its decision on *Yagnapurushdasji* and the “features of Hindu religion” outlined by the earlier ruling. After quoting copiously from *Yagnapurushdasji*, the Court opined that the Calcutta High Court rulings “directly conflict with the aforementioned views of the Constitution Bench of Hindu religion in the case of *Yagnapurushdasji Shastri*.”¹⁰⁹ The Court also referred to the opinions of Vivekananda and writings on Ramakrishna to conclude that they were not founders of a separate religion.

Thus, from what is said of Ramakrishna and Swami Vivekananda and of their religion by great world thinkers and philosophers, the glory of Ramakrishna is that he preached and made his principal disciple Swami Vivekananda to preach the religion of the Vedanta which is the religion of the Hindus...¹¹⁰

However, the Court did accept that RKM could be “regarded as a religious denomination within Hindu religion”¹¹¹ and could claim the fundamental rights guaranteed by Article 26. Thus, the Ramakrishna Mission case is a clear example that given the inclusivist model of Hinduism outlined in *Yagnapurushdasji* it is virtually impossible for any religious sect to seek exit. Just as the RKM was accorded the status of a denomination within Hinduism, so other sects such as the Arya Samaj or the Ananda Margis have successfully fought for the right to be recognized as a denomination. But the status of a minority religion has been denied in all cases.

The Hindutva ruling

The ‘Hindutva judgements’ is the collective name given to seven decisions handed down by the Supreme Court in 1996. The cases involved twelve members of Hindu nationalist parties such as the Bharatiya Janata Party and Shiv Sena. The twelve members, which included Shiv Sena chief Bal Thackeray and then Maharashtra chief minister Manohar Joshi, were charged with violating section 123 of the Representation of People Act, 1951 (RPA) by appealing to Hindutva. Section 123(3)¹¹² prohibits election candidates from appealing for votes on the grounds of religion or religious symbols among other things. Section 123(3A) prohibits attempts to promote enmity on grounds of religion, race, community or language. On the specific question of whether an appeal to Hindutva constitutes a violation of the

¹⁰⁹ *Bramchari* at 2099.

¹¹⁰ *Bramchari* at 2103.

¹¹¹ *Bramchari* at 2107.

¹¹² Section 123(3) of the RPA says: “The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.”

RPA, the main opinion of the Court was delivered in *Prabhoo v. Kunte*¹¹³ where Ramesh Yeshwant Prabhoo, then mayor of Bombay, and his election agent, Thackeray, faced charges of a corrupt practice i.e. appealing for votes on religious grounds or promoting enmity on religious grounds.

The Court first dealt with the question of the constitutionality of section 123 of the RPA, which was challenged by the appellants. The Court upheld the constitutionality of the relevant sections of the RPA on the grounds that they were “enacted to so as to eliminate from the electoral process, appeals to those divisive factors which arouse irrational passions that run counter to the basic tenets of our Constitution, and, indeed of any civilised political and social order.”¹¹⁴ Writing for the Court, Justice J.S. Verma said: “Under the guise of protecting your own religions, culture or creed you cannot embark on personal attacks on those of others or whip up low hard instincts and animosities or irrational fears between groups to secure electoral victories.”¹¹⁵

On the basis of speeches by Thackeray,¹¹⁶ the Court held that there was an appeal to voters to elect Prabhoo because he was a Hindu. The Court also held that one of Thackeray’s speeches included derogatory references to Muslims. On these counts, the Court concluded that Prabhoo and Thackeray were guilty of corrupt practices.¹¹⁷ However, the most important aspect of the ruling was the discussion on the legitimacy of appealing to ‘Hindutva’ during the election campaign. In discussing Hindutva, Justice Verma first went over the definition of Hinduism presented in *Yagnapurushdasji*. Basing his opinion on his reading of the inclusivist Hinduism of *Yagnapurushdasji* and on another later decision,¹¹⁸ Verma proceeded to conflate Hindutva with Hinduism by arguing that Hindutva was a “way of life” and could not be equated with “narrow fundamentalist Hindu religious bigotry.”¹¹⁹

Thus, it cannot be doubted, particularly in view of the Constitution Bench decisions of this Court that the words ‘Hinduism’ and ‘Hindutva’ are not necessarily to be understood and construed narrowly, confined only to the strict Hindu religious

¹¹³ See Barbara Cossman and Ratna Kapur, *Secularism’s Last Sigh? Hindutva and the (Mis)Rule of Law* (New Delhi: Oxford University Press, 1999), chapter 2, for details on the Hindutva cases.

¹¹⁴ *Prabhoo* at 1124.

¹¹⁵ *Ibid.*, 1124.

¹¹⁶ Some of Thackeray’s speeches, which were quoted by the Court, included passages like: “We are fighting this election for the protection of Hinduism. Therefore, we do not care for the votes of Muslims. The country belongs to Hindus and will remain so.”

¹¹⁷ In contrast, in another of the Hindutva cases, then Maharashtra chief minister Manohar Joshi was found not guilty for declaring in a public speech that the “first Hindu state will be established in Maharashtra.” The Court ruled: “In our opinion, a mere statement that the first Hindu state will be established in Maharashtra is by itself not an appeal for votes on the grounds of his religion but the expression, at best, of such a hope.”

¹¹⁸ *Commissioner of Wealth Tax, Madras v. Late R. Stridharan by L.R.s.*, (1976) Supp SCR 478. Here the Court said: “It is a matter of common knowledge that Hinduism embraces within self [sic] so many diverse forms of beliefs, faiths, practices and worship it is difficult to define the term ‘Hindu’ with precision.”

¹¹⁹ *Prabhoo* at 1130.

practices unrelated to the culture and ethos of the people of India, depicting the *way of life* of the Indian people. Unless the context of a speech indicates a contrary meaning or use, in the abstract these terms are indicative more of a *way of life* of the Indian people and are not confined merely to describe persons practicing the Hindu religion as a faith (italics added).¹²⁰

In conflating Hindutva with Hinduism, the Court ignored the sacred soil and birth/race aspects of Hindutva as defined by Savarkar and Golwalkar.

The Court, however, did not stop at that. Quoting from an obscure book on Indian Muslims,¹²¹ Verma then went on to opine that “the word ‘Hindutva’ is used and understood as a synonym for ‘Indianisation’, i.e. development of uniform culture by obliterating the differences between all the cultures co-existing in the country.”¹²² According to the Court, the terms Hinduism and Hindutva by themselves did not violate the provisions of the RPA. “Considering the terms ‘Hinduism’ or ‘Hindutva’ per se as depicting hostility, enmity or intolerance towards other religious faiths or professions, proceeds from an improper appreciation and perception of the true meaning of these expressions emerging from the discussions in earlier authorities of this Court... It is indeed very unfortunate, if in spite of the liberal and tolerant features of Hinduism recognized in judicial decisions, these terms are misused by anyone during the elections to gain any unfair political advantage.”¹²³ But unfortunately, these terms could be and arguably were misused in the way specified.

For the Court, the context in which the terms Hinduism and Hindutva were being used and to what end were very important. Thus Verma wrote, “It is the kind of use made of these words and the meaning sought to be conveyed in the speech which has to be seen and unless such a construction leads to the conclusion that these words were used to appeal for the votes for a Hindu candidate because he is not a Hindu or not to vote for a candidate because he is not a Hindu, the mere fact that these words are used in the speech would not bring it within the prohibition of subsection (3) or (3A) of Section 123.”¹²⁴

Though Verma assimilated Hinduism and Hindutva, he was silent on the antecedents of Hindutva. For example, he did not consider Savarkar and

¹²⁰ Ibid., 1129.

¹²¹ Maulana Wahiuddin Khan, *Indian Muslims: The Need for a Positive Outlook* (New Delhi: 1994). The exact quote was: “The strategy worked out to solve the minorities problem was, although differently worded, that of Hindutva or Indianisation. This strategy, briefly stated, aims at developing a uniform culture by obliterating the differences between all the cultures co-existing in the country.” However Cossman and Kapur point out that it is a cause of concern that the quoted passage is a description of the strategy of the Jana Sangh, which is something that the Court does not mention or seems to be bothered about. See also A.G. Noorani, *Savarkar and Hindutva: The Godse Connection* (New Delhi: LeftWord Books, 2002), 74. Noorani writes that the Maulana was not writing in praise of Hindutva but censuring it.

¹²² *Prabhoo* at 1130.

¹²³ *Prabhoo* at 1131.

¹²⁴ Ibid., 1131-2.

Golwalkar's use of sacred soil and race to include some and exclude others as foreigners. However, the intense debate generated by the Hindutva judgment brought out some of the important ramifications of the ruling. Commentators were troubled by the fact that the Court by inferring the meaning of Hindutva from Hinduism had "obscured the historical background as well as the contemporary political context"¹²⁵ of Hindutva. It was argued that the Court failed to "recognize that Hindutva as an expression has a special meaning and is associated with the social and political philosophy of Savarkar and Golwalkar."¹²⁶ It was further pointed out that the judgment implied that "Hinduism, the religion of the majority of Indians, comes to reflect the way of life of *all* Indians."¹²⁷

At the other end of the spectrum, the Hindu nationalists were jubilant. Soon after *Prabhoo*, an editorial in the *Organiser*, the journal of the RSS, stated, "The apex court has fully and unambiguously endorsed the concept of Hindutva which the [BJP] has been propounding since its inception."¹²⁸ The BJP referred to the judgment in the party's 1999 election manifesto: "Every effort to characterize Hindutva as a sectarian or exclusive idea has failed as the people of India have repeatedly rejected such a view and the Supreme Court, too, finally, endorsed the true meaning and content of Hinduism as being consistent with the true meaning and definition of secularism."

Much of the debate around the Hindutva ruling centred on the Court's role in conferring legitimacy on the use of Hindutva in the public sphere. There was also some discussion on what the judgment, and indeed legislation like the RPA, meant for the Indian model of secularism. For instance, Pratap Bhanu Mehta believes that both the Hindu nationalists and their critics were united in their fear of religion as a "site of destructive passion."¹²⁹ Mehta points out, "It seems that in India both 'secular' and 'non-secular' share the fear of unregulated religious exchange... and both have no compunctions in giving the state powers to regulate religious speech."¹³⁰ Taking a different line, Gary Jacobsohn argues that for Verma secularism means "equal treatment under the law" and that this is more "consistent with familiar Western norms of liberal democracy."¹³¹ I do not wish to enter into this debate but rather examine the Court's conflation of Hinduism with Hindutva, which was one of the striking aspects of *Prabhoo*. In the next section of this paper I look at how it was possible for the Court

¹²⁵ Cossman and Kapur (1999), 34.

¹²⁶ Anil Nauriya, "The Hindutva Judgements: A Warning Signal," *Economic and Political Weekly*, 10, January (1996), 11.

¹²⁷ Cossman and Kapur (1999), 33.

¹²⁸ *Organiser*, Editorial, December 24 (1996)

¹²⁹ Pratap Bhanu Mehta, "Passion and Constraint," *Seminar*, 521, January (2003), 57.

¹³⁰ *Ibid.*, 57.

¹³¹ Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* (New Delhi: Oxford University Press, 2003), 208. It must be noted that Jacobsohn is commenting on Verma's entire record in the Supreme Court, which included the Ayodhya and Bommai judgments.

to appropriate the ‘inclusivist’ Hinduism of *Yagnapurushdasji* to justify the ‘exclusivist’ Hinduism as exemplified by Savarkar’s Hindutva.

Hinduism and Hindutva

The conflation of Hinduism with Hindutva in *Prabhoo* hinged on the crucial use of the “way of life” metaphor. It is, therefore, appropriate to see how this metaphor bridges the inclusivist and exclusivist discourses on Hinduism. As indicated earlier, Radhakrishnan was a key figure in describing Hinduism as a “way of life” rather than a religion based on dogma. In *Yagnapurushdasji*, Gajendragadkar drew on Radhakrishnan’s writings to describe Hinduism as a “way of life.” It is interesting to note that around the same time as *Yagnapurushdasji*, the connection between Hindutva and a “way of life” was already being made. In a book published in 1969, Balraj Madhok uses the “way of life” metaphor to put forward the view that it is “wrong to talk of Hinduism as a religion in the sense in which Islam and Christianity are religions.” Why is this so? Taking the cue from Radhakrishnan, Madhok writes, “Hinduism is not a very happy expression because it creates confusion in the people’s minds about the word Hindu. It creates the impression of its being a creed or religion, a particular dogma and form of worship, which it is not. It comprehends (sic) within itself all the forms of worship prevalent in India which do not interfere with the worshipper’s loyalty to India, her culture and tradition, history and great men.”¹³² While Madhok uses Radhakrishnan’s all-inclusive definition of Hinduism as a religion without “any dogmatic creed”, he also adds a clause of “loyalty” to the Hindu *rashtra*. In a later work, Madhok again takes recourse to Radhakrishnan to explicitly make a connection between Hindutva and a “way of life” and also employ Hinduism and Hindutva as interchangeable categories: “Hinduism or Hindutva represents a specific way of life and a cultural tradition in which different beliefs and thoughts have been flourishing and co-existing side by side since the dawn of history.”¹³³

The shift from the inclusivist to the exclusivist discourse, as executed by Justice Verma and by Madhok, is possible because at the heart of both the discourses lies a project to homogenize Hinduism and deprive it of its plural character. This is quite apparent in Savarkar’s formulation of Hindutva. One of the fundamental principles of Hindutva was to give it a much broader scope than Hinduism, which Savarkar saw as religious or spiritual dogma. A major concern of Savarkar in formulating the concept of Hindutva “was to avoid the political fall-out of an excessively narrow definition of Hinduism.”¹³⁴ As Savarkar writes in *Hindutva*, “This is Hindudharma – the conclusion of the conclusions arrived at by harmonizing the detailed experience of all the schools of religious thought – Vaidik, Sanatani, Jain, Baudda (sic), Sikha or Devasamji. Each one and every one of these systems

¹³² Madhok (1969), 95.

¹³³ Madhok, *Rationale of Hindu State* (Delhi: Indian Book Gallery, 1982), 8.

¹³⁴ Sharma (2002), 22.

or sects which are the direct descendants and developments of the religious beliefs, Vaidik and non-Vaidik, that obtained in the land of the saptasindhus or in the other unrecorded communities in other parts of India in the Vedic period, belongs to and is an integral part of Hindudharma.”¹³⁵ Sumit Sarkar et al point out with regard to Hindutva: “Exclusion, however, goes along with a supreme internal catholicity. All differences of ritual, belief, and caste are irrelevant: what matters is not content but origin in (a vaguely and arbitrarily defined) *Bharatvarsha*. Monists, monotheists, polytheists and atheists, Sikhs, Arya Samajists, and advocates of Sanatan Dharma, are all equally good Hindus for Savarkar.”¹³⁶

The Indian Constitution and the Hindu Code Bill (which comprises of four different Acts), too, take an undifferentiated view of Hinduism: it includes anyone who is *not* a Muslim, Christian, Parsi or Jew under ‘Hindu’ as a legal category.¹³⁷ Arvind Sharma notes that the “Indian government, both in the language of the Indian Constitution adopted in 1950, and subsequent legislation, has virtually adopted the Hindutva definition of a Hindu — as one who belongs to any religion of Indian origin.”¹³⁸ At one level, it could be argued, that the Court with its inclusive model was merely reinforcing the Constitutional (and legislative) view of Hinduism. But the Court — with the Hindutva ruling — goes beyond the Constitutional stipulation and uses the inclusive model to identify Hinduism (and Hindutva as well) with “Indianisation” and development of a “uniform culture.”

The Court could make the argument about a “uniform culture” because there is an implicit case for uniformity and homogenization in the inclusivist model of Hinduism. Hacker identifies “a peculiar mixture of doctrinal tolerance and intolerance” as a crucial aspect of neo-Hindu thought. Thus the inclusivism of the neo-Hindus can be characterized as appropriation of differences rather than recognition of differences. This “intolerance” to difference is very much a part of the judicial discourse and is best captured by Gajendragadkar’s summing up of *Yagnapurushdasji*: “It may be conceded that the genesis of the suit is the genuine apprehension entertained by the appellants, but as often happens in these matters the said apprehension is founded on superstition, ignorance and complete misunderstanding of the true teachings of Hindu religion and of the real

¹³⁵ Savarkar (1969), 108-9.

¹³⁶ Sarkar et al (1993), 9.

¹³⁷ Explanation II appended to Article 25 includes Sikhs Jains and Buddhists as Hindus. The Hindu Succession Act of 1956, for instance, applies to: (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat, or a follower of the Brahmo, Prathana or Arya Samaj.
(b) to any person who is a Buddhist, Jain or Sikh by religion; and
(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any other custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

On this point also see Baird (1993), 43-44.

¹³⁸ Sharma (2002), 24.

significance of the tenets and philosophy taught by Swaminarayan himself.”¹³⁹

This aversion to “superstition” and popular practices and a search for the “true teachings” of Hinduism is an important element in the thinking of most Hindu reformers starting from Rammohun Roy in the early nineteenth century. Radhakrishnan unequivocally states, “In the name of toleration we have carefully protected superstitious rites and customs.”¹⁴⁰ Though he argues that Hinduism’s method of assimilation is “essentially democratic,”¹⁴¹ there is a hierarchical structure determining the entire process: “Every God accepted by Hinduism is elevated and ultimately identified with the central Reality which is one with the deeper self of man... Hinduism absorbs everything that enters into it, magic or animism, and raises it to a higher level.”¹⁴² The “central reality” of Hinduism is represented by the Vedas which Radhakrishnan (and indeed many of the earlier Hindu reformers) believe is the “basis of Hindu religion.”¹⁴³ Because of the Vedic core of Hinduism, Radhakrishnan could assert that “differences among the sects of Hindus are more or less on the surface” and that the Hindus “as such remain a distinct cultural unit, with a common history, a common literature and a common civilization.”¹⁴⁴ In a similar vein, Gajendragadkar finds a “subtle indescribable unity” within the “divergence” of Hinduism. In the Court’s definition of Hinduism in *Yagnapurushdasji*, too, “acceptance of the Vedas” is a key element. The appeal to the Vedas is convenient because the “Vedic texts contain no Hindu dogma, no basis for a ‘creed’ of Hinduism, no clear guidelines for the ‘Hindu way of life’.”¹⁴⁵ It is precisely the open-endedness of the Vedic texts which make them the perfect ally of Hindu reformers as well as the Court in their quest to construct a more homogenized and rational Hinduism.

Conclusion

It can be argued that the convergence of the inclusivist and exclusivist discourses on interpreting Hinduism as a “way or life” and on the project of homogenizing Hinduism is a possible explanation for the Court’s conflation of Hinduism and Hindutva. However, it is also vitally important to note that this homogenization of Hinduism was inspired by fundamentally different visions. In the case of Radhakrishnan, regeneration of Hinduism — in his words placing “the whole Hindu population on a higher spiritual plane”¹⁴⁶ — was his primary goal. Similarly Gajendragadkar was interested in changes in the “whole social and religious outlook of the Hindu

¹³⁹ *Yagnapurushdasji* at 1135.

¹⁴⁰ Radhakrishnan (1957), 33.

¹⁴¹ *Ibid.*, 42.

¹⁴² *Ibid.*, 46.

¹⁴³ Radhakrishnan, *Religion and Society* (London: Allen and Unwin, 1947), 109.

¹⁴⁴ Radhakrishnan (1957), 14.

¹⁴⁵ Wilhelm Halbfass, *Tradition and Reflection Explorations in Indian Thought* (Albany: SUNY Press, 1991), 1. It is interesting to note that Max Weber believed that the “Vedas defy the dharma of Hinduism.” Cited in Halbfass (1991), 1.

¹⁴⁶ Radhakrishnan (1957), 33.

community.”¹⁴⁷ In contrast, Savarkar was putting forth a territorial and racial conception of Hinduism. Religion per se has little connection with Savarkar’s conception of Hindutva: he was not primarily concerned with reform of Hinduism but with the political goal of creating a Hindu *rashtra* (nation).

Hence, when Justice Verma equated Hinduism with Hindutva he was not only collapsing the inclusivist and exclusivist models, he was also giving a highly political dimension to the judicial discourse on Hinduism.¹⁴⁸ It has already been observed how *Prabhoo* was welcomed by the Hindu nationalists as a vindication of Hindutva. Verma’s additional move of equating Hindutva with ‘Indianisation’ gave the Court’s seal of approval, in a sense, to the Hindu nationalists’ conception of the nation. This is clearly illustrated in the ‘Vision Document’ released by the BJP prior to the last general elections in India in 2004. Under the sub-heading ‘Cultural Nationalism’ the document states, “Contrary to what its detractors say, and as the Supreme Court itself has decreed, Hindutva is not a religious or exclusivist concept. It is inclusive, integrative, and abhors any kind of discrimination against any section of the people of India on the basis of their faith.”¹⁴⁹ The BJP, following the Verma judgment, says “Indianness, Bharatiyata and Hindutva” must be treated as synonyms.¹⁵⁰

Madhok’s strategy of using ‘Hindutva’ and ‘Bharatiya’ as interchangeable categories is now very much the centrepiece of the BJP’s ideology. The vision document as well as recent speeches and interviews by Hindu nationalist leaders suggest that the language of inclusivism is being used to justify Hindutva and an exclusivist agenda. In early 2004, the RSS chief K.S. Sudarshan referred to *Yagnapurushdasji* and said since the Supreme Court had said the term ‘Hindu’ referred to a way of life and not a religion, Muslims and Christians should be considered as Hindus.¹⁵¹

In a significant blurring of the boundaries of inclusivism and exclusivism, former Prime Minister Atal Bihari Vajpayee said in an interview, “Hindus cannot be fundamentalists. The Hindu worldview, we must remember, is inclusivist, as opposed to the exclusivist worldview of other faiths.”¹⁵² This brings one back to the point about the convergence of the inclusivist and exclusivist discourses in the Court’s reading of Hinduism. Thus, the inclusivist discourse on Hinduism, as understood by

¹⁴⁷ *Yagnapurushdasji* at 1135.

¹⁴⁸ In an interview with the author in July 2004, Justice Verma refused to see *Prabhoo* as crucial to the understanding of Hinduism or Hindutva. He preferred to view it as revolving around “freedom of speech and expression.” See Jacobsohn (2003), 202-12, for Verma’s views.

¹⁴⁹ For the full text of the document see www.bjp.org.

¹⁵⁰ See www.bjp.org. It was former Prime Minister A.B. Vajpayee who resurrected Madhok’s idea at the end of 2002 during his annual ‘musings’. This was widely reported by most major dailies in India. Senior BJP leader L.K. Advani stressed this point in a recent interview to BBC when he said he preferred ‘Bharatiyata’ to ‘Hindutva.’ *The Pioneer*, September 10, 2004.

¹⁵¹ *The Times of India* (Kolkata edition), January 25, 2004.

¹⁵² See www.bjp.org. The interview was conducted before the 2004 general elections.

Radhakrishnan or Gajendragadkar, has lent itself to interpretations that build on their failure to recognise India's composite and syncretistic culture.

BIBLIOGRAPHY

- Anderson, Walter and S. Damle. *Brotherhood in Saffron* (Boulder: Westview Press, 1987).
- Baird, Robert, ed. *Religion in Modern India* (Delhi: Manohar, 1991).
- _____, ed. *Religion and Law in Independent India* (New Delhi: Manohar, 1993).
- Basu, Shamita. *Religious Revivalism as Nationalist Discourse: Swami Vivekananda and New Hinduism in Nineteenth Century Bengal* (New Delhi: Oxford University Press, 2002)
- Basu, Tapan, Pradip Datta, Sumit Sarkar, Tanika Sarkar, Sambuddha Sen. *Khaki Shorts and Saffron Flags: A Critique of the Hindu Right* (New Delhi: Orient Longman, 1993).
- Bernier, Francois. *Travels in the Mogul Empire 1656-1668* (New Delhi: Oriental Reprint, 1983).
- Bhatt, Chetan. *Hindu Nationalism: Origins, Ideologies and Modern Myths* (Oxford and New York: Berg, 2001).
- Chatterjee, Partha. *Nationalist Thought and the Colonial World* (Minneapolis: University of Minnesota Press, 1993).
- Cosman, Barbara and Ratna Kapur, *Secularism's Last Sigh? Hindutva and the (Mis)Rule of Law* (New Delhi: Oxford University Press, 1999).
- Galanter, Marc. *Law and Society in Modern India* (New Delhi: Oxford University Press, 1997).
- Golwalkar, M.S. *We or Our Nationhood Defined* (Nagpur: Bharat Prakashan, 1947).
- Graham, Bruce. *Hindu Nationalism and Indian Politics: The Origins and Development of the Bharatiya Jana Sangh* (Cambridge: Cambridge University Press, 1990).
- Halbfass, Wilhelm. *India and Europe: An Essay in Understanding* (Albany: SUNY Press, 1988).
- _____. *Tradition and Reflection: Explorations in Indian Thought* (Albany: SUNY Press, 1991).
- Hawley, John Stratton. "Hinduism and the Fate of India," *Wilson Quarterly* (Summer 1991).

- Inden, Ronald. *Imagining India* (Bloomington: Indiana University Press, 2000).
- Jacobsohn, Gary Jeffrey. *The Wheel of Law: India's Secularism in Comparative Constitutional Context* (New Delhi: Oxford University Press, 2003).
- Jones, Kenneth W. *Arya Dharm: Hindu Consciousness in Nineteenth-Century Punjab* (Berkeley: University of California Press, 1976).
- Jordens, J.T.F. *Dayananda Saraswati: His Life and Ideas* (Delhi: Oxford University Press, 1978).
- Kaviraj, Sudipta. *The Unhappy Consciousness: Bankimchandra Chattopadhyay and the Formation of Nationalist Discourse in India* (New Delhi: Oxford University Press, 1998).
- Khan, Maulana Wahiuddin. *Indian Muslims: The Need for a Positive Outlook* (New Delhi: 1994).
- King, Richard. "Orientalism and Modern Myth of 'Hinduism'," *Numen* 46 (1999).
- Madhok, Balraj. *Indian Nationalism* (New Delhi: Bharatiya Sahitya Sadan, 1969).
- ___ *Rationale of Hindu State* (Delhi: Indian Book Gallery, 1982).
- Marty, Martin and R.S. Appleby, eds. *Fundamentalisms Observed* (Chicago: University of Chicago Press, 1991).
- Mehta, Pratap Bhanu. "Passion and Constraint," *Seminar* 521 (January 2003).
- Monier-Williams, Monier. *Religious Thought and Life in India* (New Delhi: Oriental Books Reprint Corp, 1974).
- Nandy, Ashis. *The Intimate Enemy: Loss and Recovery of Self Under Colonialism* (New Delhi: Oxford University Press, 1992).
- Nandy, Ashis, Shikha Trivedy, Shail Mayaram, Achut Yagnik. *Creating a Nationality: The Ramjanambhumi Movement and Fear of the Self* (Delhi: Oxford University Press, 2002).
- Nauriya, Anil. "The Hindutva Judgements: A Warning Signal," *Economic and Political Weekly* (10 January 1996).
- Noorani, A.G. *Savarkar and Hindutva: The Godse Connection* (New Delhi: LeftWord Books, 2002).
- Radhakrishnan, Sarvepalli. *The Hindu View of Life* (New York: Macmillan, 1957).
- ___ *Religion and Society* (London: Allen and Unwin, 1947).

- Radice, William, ed. *Swami Vivekananda and the Modernization of Hinduism* (Delhi: Oxford University Press, 1998).
- Robertson, Bruce Carlisle, ed. *The Essential Writings of Raja Rammohun Roy* (Delhi: Oxford University Press, 1999).
- Savarkar, V.D. *Hindutva: Who is a Hindu?* (Bombay: Veer Savarkar Prakashan, 1969).
- Sharma, Arvind, ed. *The Study of Hinduism* (Columbia: University of South Carolina Press, 2003).
- _____. "On Hindu, Hindustan, Hinduism and Hindutva," *Numen* 49 (2002).
- Smith, Wilfred Cantwell. *The Meaning and End of Religion: A New Approach to the Religious Traditions of Mankind* (New York: Macmillan, 1962).
- Sontheimer, Gunther D. and Herman Kulke, eds. *Hinduism Reconsidered* (New Delhi: Manohar Publications, 1991).
- Thapar, Romila. "Imagined Religious Communities? Ancient History and the Modern Search for a Hindu Identity," *Modern Asian Studies* 23, 2 (1989).
- Vivekananda, Swami. *The Collected Works of Swami Vivekananda* (Calcutta: Advaita Ashrama, 1971-73).



HEIDELBERG PAPERS OF SOUTH ASIAN AND COMPARATIVE POLITICS

Submissions

Heidelberg Papers in South Asian and Comparative Politics (HPSACP) welcome submissions of papers in the field of comparative government and politics related to the region of South Asia. This paper series is dedicated to the promotion of scholarly exchange and shall provide a forum for discussion among academics, researchers, students and policy makers engaged in the study of comparative politics and the South Asian region.

Submissions to the series should not exceed 12,000 words. All papers are refereed by editorial consultants. The editorial consultant or the editorial board might ask authors to revise their papers prior to publication and reserves the right to reject papers. While we will occasionally reprint an article with the author's and publisher's consent where the original is not widely available in print and not available elsewhere on the Internet, we expect that other submissions will consist of primarily original work not elsewhere published.

Manuscripts should be submitted in electronic format using Microsoft Word or in Rich Text Format (.rtf) by email: [js3 @ix.urz.uni-heidelberg.de](mailto:js3@ix.urz.uni-heidelberg.de).

Style

Papers should be submitted in English language. American or British spelling may be used, but should be consistently used throughout the entire paper.

Sub-headings should be in capital letters; sub-sub-headings in italic. Papers should use embedded citation, e.g. (Kohli 1990: 121). There must be a separate list of references at the end of the manuscript. Footnotes should be at the end of each page and should *ideally* not be used for simple citations. If another method of citation is preferred, it should follow the usual journal standards and be consistently used throughout the entire paper.

Book titles and names of journals should be in italic; titles of articles and chapters in edited collections should be in double inverted commas. For example:

For books:

KOHLI, Atul. 1990. *Democracy and Discontent. India's Growing Crisis of Governability*. Cambridge: Cambridge University Press.

For articles:

DUNCAN, Ian. 1999. 'The Revival of the Congress? India's Mini-General Election November 1998', *Journal of Commonwealth and Comparative Politics*, 37 (2), 57-72.

Newspapers:

Times of India (New Delhi), 12 July 1999.

For websites:

<http://www.hinduonline.com/today/stories/011900001.htm> sighted on 19 July 2000.

**HEIDELBERG PAPERS OF SOUTH ASIAN AND COMPARATIVE POLITICS –****THE SERIES**

The Novelty of Europe as seen from the Periphery: Indian Perception of the 'New Europe' in a Multi-polar world
Authors: Mitra, Subrata K. Year: 2005 No. 28, April 2006
Federalism and Regionalism in India : Institutional Strategies and Political Accommodation of Identity
Authors: Bhattacharyya, Harihar Year: 2005 No. 27, May 2005
From Hard Power to Soft Power? Ideas, Interaction, Institutions, and Images in India's South Asia Policy
Authors: Wagner, Christian Year: 2005 No. 26, March 2005
The Politics of Poverty Alleviation in Nepal : Structural Analysis of Socioeconomic Development from the Past Five Decades
Authors: Devkota, Surendra R. Year: 2005 No. 25, February 2005
Whose Language is Urdu?
Authors: Abbi, Anvita ; Hasnain, Imtiaz ; Kidwai, Ayesha Year: 2004 No. 24, September 2004
Religious Diversity and the Colonial State : Hindu-Muslim Relations under British Rule
Authors: McPherson, Kenneth Year: 2004 No. 23, August 2004
Relating Spirituality and Politics: Love, Marriage or Friendship?
Authors: Srinivasan, Vasanthi Year: 2004 No. 22, August 200
National Minority Rights in the Himalayas
Authors: Sonntag, Selma K. Year: 2004 No. 21, June 2004
From Dharma to Law and Back? Postmodern Hindu Law in a Global World
Authors: Menski, Werner Year: 2004 No. 20, January 2004
Collective Violence and the Making of Civil Society : India in European Perspective
Authors: Mitra, Subrata K.

Year: 2003 No. 19, October 2003
The Rationality of Politics in Uttar Pradesh : Towards a Re-evaluation of the Concept of Factionalism
Authors: Schwecke, Sebastian Year: 2003 No. 18, July 2003
Communal Riots in Gujarat: The State at Risk?
Authors: Jaffrelot, Christophe Year: 2003 No. 17, July 2003
Democratic Peace in South Asia?
Authors: Wagner, Christian Year: 2003 No. 16, June 2003
The Coffee House and the Ashram: Gandhi, Civil Society and Public Spheres
Authors: Hoerber Rudolph, Susanne ; Rudolph, Lloyd I. Year: 2003 No. 15, June 2003
Decentralization, Federalism and Ethnic Conflict in Sri Lanka
Authors: Bigdon, Christine Year: 2003 No. 14, May 2003
The Challenge of Security in the Indian Ocean in the 21st Century : Plus ça change...?
Authors: Lehr, Peter Year: 2002 No. 13, November 2002
Measuring Conflicts in South Asian Countries (1945-2002)
Authors: Pfetsch, Frank R. Year: 2002 No. 12, November 2002
India's Nuclear Doctrine : Context and Constraints
Authors: Alam, Mohammed B. Year: 2002 No. 11, October 2002
One-Party-Dominance in Changing Societies: The ANC and INC in Comparative Perspective
Authors: Spieß, Clemens Year: 2002 No. 10, October 2002
Emerging Major Powers and the International System: Significance of the Indian View
Authors: Mitra, Subrata K. Year: 2002 No. 09, October 2002
State Interests and Symbolism in India's Nuclear Build-Up

Authors: Frey, Karsten Year: 2002 No. 08, October 2002
From Legalism to Realism in Kashmir : Internationalising the Line of Control
Authors: Ghosh, Partha S. Year: 2002 No. 07, September 2002
Political Representation and Empowerment : Women in the Institutions of Local Government in Orissa after the 73rd Amendment to the Indian Constitution
Authors: Hust, Evelin Year: 2002 No. 06, August 2002
Is There Still Untouchability in India?
Authors: Deliège, Robert Year: 2002 No. 05, June 2002
Constitutional Design, Democratic Vote Counting, and India's Fortuitous Multiculturalism
Authors: Mitra, Subrata K. Year: 2001 No. 04, November 2001 (Abstract / Fulltext)
Democratic Institution Building Process in Bangladesh : South Asian Experience of a New Model of a 'Care-taker Government' in a Parliamentary Framework
Authors: Molla, Gyasuddin Year: 2000 No. 03, December 2000
Communalism and Identity among South Asians in Diaspora
Authors: Bates, Crispin Year: 2000 No. 02, September 2000
The Politics of the Punjab Boundary Award
Authors: Cheema, Pervaiz Iqbal Year: 2000 No. 01, September 2000