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Arvind Narain

Mathew John

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THE HINDUTVA JUDGMENTS: A COMMENT

Arvind Narain*

Mathew John*

In 1995-96 the Supreme Court delivered a set of seven decisions along with one clarifying judgment which are popularly referred to as the Hindutva cases.¹ All these cases were decided under the Representation of Peoples Act, 1951, and though two of these cases resulted in the invalidation of elections on grounds of violation of the act, what is clearly borne out through these judgments is the legitimacy given by the Supreme Court to the politics of the Hindu right. This paper attempts to point out that the failings of the Court while attempting definitions of Hindutva and Hinduism; terms that can no longer be located in the simplistic definitional processes employed by Supreme Court.

In what are clearly the two core judgments - *R Y Prabhoo v. P K Kunte*² and *Manohar Joshi v. Nitin Bhauroo Patil*³ the court laid down the basic principles on which all further actions of the Hindu right are to be predicated. In *Prabhoo's* case the court dealt with the meaning of the terms Hinduism and Hindutva and defined it by referring to a previous decision of the court in *C.W.T., Madras v. Sreedharan*⁴ which noted that "It is a matter of common knowledge that Hinduism embraces within itself so many diverse forms of beliefs, faiths, practices and worship that it is difficult to define the term Hindu with precision". The court also referred to another case⁵ which quoted from Dr Radhakrishnan "Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one god; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances..... in fact it does not appear to satisfy the narrow traditional features of any religion or creed. It may be described as a way of life and nothing more". From these two decisions the court concluded "that no precise meaning can be ascribed to the term Hindu, Hindutva and Hinduism and no meaning in the abstract can confine to the narrow realm of religion alone, excluding the content of Indian culture and

* IV Year B.A., LL.B. (Hons.), National Law School of India University.

1 *Manohar Joshi v. N.B. Patil*, (1995) 7 SCALE 30; *Y. Prabhoo v. P.K. Kunte*, (1995) 7 SCALE 1; *R.G. Kapse v. H.R. Singh*, (1995) 7 SCALE 60; *Sadhvi Rithambara v. H.R. Singh*, (1995) SCALE 60; *R. Mayekar v. Celine D'Silva*, (1995) SCALE 72; *M. Save v. D.Y. Pathrikar*, (1995) 7 SCALE 85; *Goyal v. S.S.K. Singh*, (1995) SCALE 88; *S.V. Madhik v. S.S. Naik*, (1995) 7 SCALE 92; For a detailed review of these judgments See B. Cossman & Ratna Kapoor, *Secularism: Benchmarked by the Hindu Right*, EPW September 21, 1996.

2 (1995) 7 SCALE 1.

3 (1995) 7 SCALE 30.

4 (1976) Suppl SCR, 478.

5 *Sastri Yagnapurushdasji v. Muldas Bhudardas*, 1996 (3) SCR 342.

heritage. It is also indicated that the term Hindutva is related more to the way of life of the people in the subcontinent. It is difficult to appreciate how in the face of these decisions the term Hindutva or Hinduism *per se* in the abstract can be assumed to mean and be equated with narrow fundamentalist Hindu bigotry". Thus the court arrived at a definition of Hindutva by referring to a set of abstract formulations regarding Hinduism in previous decisions totally disregarding the contextualities in which these terms operate.⁶

In *Chandrakanta Goyal v. S.J. Kholi*,⁷ probably the most progressive of the Hindutva judgments, the court refined the concept of Hindutva and noted that the use of the word Hindutva in a speech has to be understood in the context and according to the manner in which it was meant to be understood by the audience, irrespective of the meaning Hindutva in the abstract. This understanding of Hindutva was used to decide that an appeal to vote on the basis of religion in a temple amounted to a corrupt practice under s. 123(3) of the Representation of People's Act, 1951. While the court recognised that speech has to be understood in context it failed to recognise that Hindutva represents a distinct ideological formation with the backing and support of an elaborate organisational apparatus.⁸ It is important to realise that all speech is embedded in a set of material and ideological conditions and in this case it is difficult to envisage an allusion to Hindutva outside of the ideology of the RSS and its affiliates.⁹

We believe that the failure of the court to locate the politics of Hindutva within the ideological structures of the Sangh Parivar as also the formulation of an abstract definition of Hindutva devoid of any relationality to material conditions of reality

6 Traditionally Hinduism has been viewed as space of competing pluralities, but with the Court equating Hinduism with the monolithic Hindutva ideology of the RSS and its affiliates the possibilities of resistance from within the boundaries of Hinduism might have been reduced considerably. However we believe that in contemporary settings it is very difficult to differentiate between these two terms as they operate from the same space (i.e. the platform of the Hindu right) and will therefore use these terms interchangeably.

7 (1995) 7 SCALE 92.

8 This was recognised to some extent by the Bombay High Court in *R. Mayekar v. Celine D'Silva* (1995) SCALE 72 where Variyava J. opined that "in my view where the plank has been declared by the leader of the party and the leader of the party has complete control of the affairs of the party, once it is proved and held that the plank declared by the leaders amounts to a corrupt practice, every candidate of that party will be bound by that plank. As it is set out therefore that the plank of Hindutva as declared by the leaders amounts to corrupt practice of appealing for votes on the basis of religion and also amounts to a corrupt practice of attempting to create enmity and hatred between Hindus and Muslims."

9 For purposes of convenience the RSS and its various front organisations like the VHP, BJP etc will be referred to as the Sangh Parivar. It is beyond the scope of this paper to establish the linkages that exist between the RSS and its various frontal organisations however it must be mentioned that the RSS plays a vital role in the shaping of a exclusivist Hindutva ideology based on religious intolerance and aimed at the establishing of a Hindu Rashtra. For a detailed study on the Hindutva ideology and the role of the Sangh Parivar in shaping this ideology; see Tapan Basu *et al. Khaki Shorts Saffron Flags* (1993).

is the legitimising of the hate politics of the Sangh Parivar which has scant respect for constitutional and democratic values.¹⁰ Therefore what is called for is a paradigm shift in defining concepts such that concepts are not defined philosophically but historically¹¹ and contextually. Thus the important questions that have to be asked while attempting a definition of Hindutva will be - Do people see it as a plural way of life? Does a particular community get militantly mobilised under the banner of Hindutva? Does Hindutva instil a fear psychosis among minority groupings? ... Constructing a definition of Hindutva on the basis of these questions one finds that Hindutva represents a exclusivist, violent, and unsecular grouping.¹² This understanding of Hindutva was recognised by the Bombay High Court in *Ramakant Meyer v. Celine D'Silva*¹³ where the court looked at the appeal to Hindutva as a corrupt practice attempting to create hatred between Hindus and Muslims. Unfortunately however the Supreme Court failed to recognise the complexities of the Hindutva movement while defining it. Thus the point being made is that Hindutva has to be understood in terms of what the leaders say, how the people understand what is being said and finally what are the consequences of what is being said. Only if we understand these elements of the definitional process can we escape the mystical meanderings which obfuscate the real issues and ensure that the operation of law is not paralysed.

We would like to note a seemingly peripheral but important point that is often glossed over when one refers to Hindutva. We see Hindutva as a Bhraminical ideology seeking to create a pan Hindu/Indian identity which is inherently marginalising and aimed at stabilizing a Bhraminical hegemony. Legitimising Hindutva as the Indian way of life would therefore be emphasizing historically relevant questions as also a history of resistance to the dominant Bhraminical

10 Though it is beyond the scope of this paper to make a detailed study of the unconstitutional, undemocratic and clearly unsecular politics of the Hindu right however it might be apposite to note the position of this formation on various issues - Gowalkar an ideologue of the Sangh Parivar fashions his cultural nationalism along the lines of Nazi Germany "... Germany has shown how well-nigh impossible it is for races and cultures, having differences going to the root, to be assimilated into one united whole, a good lesson for us in Hindustan to learn and profit by". See M.S. Gowalkar, *We Our Nationhood Defined* 27 (1938); See Election Manifesto, 1990 of the BJP (this document clearly spells out the resolve of the party to build the temple at the disputed site; shortly afterwards the Mosque was demolished); L.K. Advani is reported to have announced to the *kar sevaks* at the date of the demolition of the Mosque "We don't need bulldozers. If we all take a *thela* each, the *Masjid* can't survive and the *malba* cannot be traced." *Citizens Tribunal on Ayodhya* (1994). "Let all Muslims accept Ram as their hero and all communal problems will be over" *Organizer*, 20th June, 1971. Though these positions are randomly chosen they all reflect the basic premise regarding the fundamentally unsecular politics of the Sangh Parivar.

11 Reference to 'historical' is antithetical to the historicity built up through case law as in *Prabhoo's case*, *supra* n. 1 which defined Hindutva in abstract terms as "a way of life". Even at the risk of repetition we wish to emphasise that Hindutva is not an abstract philosophical concept but a historical concept embedded in the ideology of the Hindu right.

12 "Depositions at the citizens tribunal clearly indicate that the forces of Hindutva do actually instill a fear psychosis among Muslims" *Citizen Tribunal on Ayodhya* (1994).

13 *Supra* n. 8.

ideology. One only has to look at various articulations to see this critique of Hindutva. As Kanchah Ilaiah puts in what will no doubt come as a rude shock to all the complacent Bhramins secure in their knowledge of a secular Hinduism "Hinduism has never been a humane philosophy. It is the most brutal religious school that the history of religion has witnessed. The Dalit Bahujan castes of India are living evidence of this brutality."¹⁴ Thus the call to the judiciary is not legitimise Bhraminical or caste oppression, through concepts like Hindutva but to take a progressive approach as regards the complex issues that it is asked to adjudicate.

In conclusion we submit that firstly Hindutva is a historical and not a philosophic concept and secondly Hindutva cannot be defined without taking into account the agency role of Hindutva in promoting conflict and the essentially Bhraminical nature of the entire concept.

13 K. Ilaiah, *Why I am not a Hindu*, 113 (1996).