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Enshrining a Secular Idol: A Judicial Response to the Violent Aftermath of Ayodhya

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I. Introduction

On December 6, 1992, the secular foundation of the Indian State collapsed, as a mob of over 200,000 Hindu extremists, clad in saffron headbands, tore down and demolished the Babri Mosque, a long-standing Muslim edifice located in the northern town of Ayodhya. These Hindus believe that the mosque was built on a site commemorating the Hindu god Ram, one of the most revered Hindu gods. Proving to be one of the nation’s most cataclysmic events, the incident precipitated intense rioting throughout India, with the ultimate death toll exceeding 2,800 citizens. In a matter of only a few hours, the crowd violated national, constitutional commitments to secularism.

This transformative event demonstrates how religion and nationalism have become inextricably linked in modern India, frustrating the nation’s constitutional goal of becoming a “secular democratic republic.” In India, “secular” is not synonymous with anti-religious; the constitutional definition of secularism is a grant of freedom of exercise, and not an absence of all religion. Furthermore, secularism in India is the State’s guarantee of freedom of religious association and not a strict separation between Church and State.

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1 Ashutosh Varney, Battling the Past, Forging a Future? Ayodhya and Beyond, in INDIA BRIEFING, 1993 9, 11 (Philip Oldenburg ed., 1993).

2 Id.

3 Id.


5 INDIA CONST. pmbl.

6 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 476 (1967)

7 Id. at 477.
The Ayodhya incident was not the first sign of contention between religion and the country's legal order. Rather, the conflict culminated decades of religious and constitutional strain. As one scholar notes, "The razing of the mosque [by] a frenzied mob of Hindu holy men and young men committed to Hindutva [Hindu nationalism] seemed to symbolize an eruption of forces welling up from deep within the polity." No single event in the country's history better illustrates the confrontation of law and religion and the inability of politics to contain and the law to protect secularist values in India's fragile democracy. The forces leading up to the Ayodhya incident and its tragic aftermath cast profound doubt on whether constitutional secularism is still a plausible goal in the modern Indian democracy. More specifically, to what extent have explicit constitutional provisions aimed at protecting interests of religious minorities achieved their purpose? The following comments from a Bombay Muslim to a Times of India reporter accurately capture the impact of the mosque destruction on the Muslim perspective of constitutional protection, "[T]he events in Ayodhya on December 6 and subsequent developments have made one thing clear to us: the Constitution can no longer protect us. The so-called secular state cannot uphold our rights." Put simply, how is it possible for the Indian State to guarantee freedom of religion if the Hindu majority wishes to impose something else?

The culmination of religious extremism embodied in the Ayodhya incident is not an isolated moment, but rather, the watershed of a new era of religious strife and violence in India. Residents of Bombay (now Mumbai), the country's urban hallmark of secular modernity, the capital of relentless commercialism, and a showpiece of globalization, dramatically experienced the social and economic reverberations of the Ayodhya violence. Bombay's social climate on December 7, 1992 illustrates how pro-

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10 A comprehensive analysis of secularism in India is beyond the scope of this Note. The Note, however, will focus on "constitutional secularism" to limit the study of secularism to India's constitutional experience. "Constitutional secularism" in the context of the Ayodhya controversy suggests that secularism must be understood within the broader framework of the document's commitment to social reconstruction and the history of religious tension in India. Thus, for purposes of this analysis, constitutional secularism refers to a unique brand of secularism aimed to reverse traditional religious biases. See GARY JEFFREY JACOBSOHN, THE WHEEL OF LAW: INDIA'S SECULARISM IN COMPARATIVE CONSTITUTIONAL CONTEXT 13 (Princeton University Press 2003).
11 Dileep Padgaonkar, This is Not Bombay, in WHEN BOMBAY BURNED 1, 8 (Dileep Padgaonkar ed., 1993).
12 Id. at 11.
13 For a more accurate account of the chronology of violence in large urban areas like Bombay, see Padgaonkar, supra note 11, at xi.
foundly the Ayodhya event disturbed daily life in the city, as the city was literally being ripped apart by sectarian violence.\textsuperscript{14}

Empirically, the impact of the mosque destruction was most severe in Bombay, where hundreds of Hindu and Muslim demonstrators were killed in a matter of days.\textsuperscript{15} The violence erupted into massive rioting in the early parts of 1993, fueling some of the country’s most heinous acts of destruction since its birth, only forty-six years earlier. Violent rioters (Hindus and Muslims) burned down hundreds of shops with kerosene, torched bus depots, and burned families alive in their own homes.\textsuperscript{16} As the political, social, and economic structure in Bombay deteriorated at an exponential rate, many Hindus and Muslims realized the only real solution to the violence was to leave the city. Thus, in the early months of 1993, “[I]t [was] estimated [that] 60,000 people had left their shattered lives and homes behind them. By the middle of the next week, the number of refugees was estimated to have gone up to 150,000.”\textsuperscript{17} While the rioting finally showed signs of subsiding by early February of that year, the nation was reminded that the struggle was far from being extinguished on March 12, 1993, when a series of nine bomb explosions throughout Bombay claimed the lives of over 400 innocent civilians, leaving the country’s financial capital in utter social and economic disarray.\textsuperscript{18}

Although the extent of religious violence in Bombay and other parts of the country has been neutralized since the immediate aftermath of Ayodhya, the tension between Hindus and Muslims remains a pervasive source of conflict in modern India. A group of Muslim fundamentalists reignited the violence in March of 2002, when they set a train on fire in the Gujarati city of Godhra that was transporting several Hindus to Ayodhya for participation in plans to build a temple on the site of the former Babri Mosque. While the attack on the train killed fifty-eight people, the violence that ensued in western India claimed over 200 lives in a period of only four days.\textsuperscript{19} However, the Hindu victims in the Godhra tragedy were perhaps not innocent bystanders. One alternative theory provided that the violence began when a group of Hindu militants refused to pay for snacks at the Godhra railway station, and as the Muslim stall owner contested the theft, the Hindu mob


\textsuperscript{15} \textsc{Thomas Blom Hansen}, \textit{Wages of Violence: Naming and Identity in Postcolonial Bombay} 121 (2001).


\textsuperscript{17} \textit{Id}. at 69.

\textsuperscript{18} For a detailed account of the bomb explosions, see Fernandez, \textit{supra} note 16, at 105.

seized his sixteen year-old daughter.\textsuperscript{20} Subsequently, the girl’s outcry and her father’s pleas for help compelled two other Muslims to board the train as it left the station, who retaliated by attacking innocent passengers on the train.\textsuperscript{21} Some Muslims even reported that the attack was a pre-planned effort by members of Hindu fundamentalist groups like the Sangh Parivar to justify violence against Muslims.\textsuperscript{22} Although the credibility of this alternative theory about who triggered the violence in Godhra is still under investigation, the amount of destruction caused by the ensuing rioting has been confirmed. The Hindu rampage that followed the Godhra attack resulted in the destruction of $600 million of Muslim property and the demolition of at least thirty mosques in the nearby city of Ahmedabad alone.\textsuperscript{23}

Thus, the continuous incitement of violence reminds the country’s consciousness that Ayodhya is not just a moment of India’s history; it is inextricably linked to the nation’s present and future. As one reporter concludes, “The mosque is a touchstone of Hindu-Muslim tension in a sprawling nation where people of nearly every religion generally live peaceably.”\textsuperscript{24} The ineffectiveness of the law, and particularly the Constitution, to contain and curtail the religious contention further captures the severity of the conflict.

In his address commemorating the golden jubilee of the republic and the constitution on January 27, 2000, President K.R. Narayanan employed an introspective approach in examining the effectiveness of the Indian Constitution: “[T]oday when there is so much talk about revising the Constitution or even writing a new Constitution, we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution.”\textsuperscript{25} The President’s perspective poses an important challenge for India to examine how secularist constitutional protections have been invoked in cases like Ayodhya, where religion is the source of the dispute. The principle of constitutional secularism permeates the Ayodhya situation, where the religious dispute culminated in a legal action brought by Hindu


\textsuperscript{21} Id.

\textsuperscript{22} See \textit{Gujarat Violence was Pre-planned}, at http://www.islamicvoice.com/june.2002/community.htm (last visited January 12, 2004).


\textsuperscript{24} Dugger, supra note 19, at A1.

Nationalist groups challenging property rights over the disputed site in Ayodhya.  

In order to trace the trajectory of constitutional secularism in modern India, this Note will focus on the behavior of the Indian Supreme Court, the institution that has played an integral role in resuscitating submerged constitutional values. The character of the Supreme Court underwent a transformation after the 1975 Emergency. During the Emergency regime, a period of totalitarianism initiated by Prime Minister Indira Gandhi, the Supreme Court facilitated Indira Gandhi’s despotic behavior by conceding absolute power to Parliament and relinquishing its power to uphold fundamental rights. The Supreme Court’s accommodating approach to the Prime Minister’s totalitarian regime was particularly disappointing to the national constituency because “[t]he major areas of the law and Constitution affected substantially by the emergency amendments were the very areas in which most people then, and almost now, expected a vigorous assertion of judicial power by the highest Court in the land.”

In order to restore its legitimacy and institutional independence, the Indian Supreme Court aspired to bury its emergency past through an overwhelming surge of judicial activism. The post-Emergency activist court has played a critical role in creating a framework of lawfulness and consistency in order to protect individual rights. It is therefore critically important to examine how Indian constitutional adjudication has protected religious minorities in the post-Emergency era. By using the Ayodhya situation as a doctrinal predicate, and investigating relevant case law beyond the Ayodhya decision, this Note seeks to ascertain whether constitutional secularism is capable of surviving in the modern Indian democracy.

Section II of this paper will provide the history of Indian constitutionalism and the framers’ goals for secularist provisions. Section III will provide a critical assessment of the Supreme Court’s ability to maintain a secularist approach by analyzing the Ayodhya property dispute in Faruqui v. Union of India, as well as peripheral case law involving religious disputes in other arenas such as education and employment. Section IV will provide prospective solutions through the judicial and non-judicial role in the pre-

26 This will be examined in more detail in Faruqui v. Union of India, AIR 1995 S.C. 613, in supra Part III. For a definition of constitutional secularism, see note 10.
27 See generally Upendra Baxi, Indian Supreme Court and Politics 123-25 (1980) (arguing that the Indian Supreme Court demonstrated a surge of judicial activism in order to re-establish its legitimacy in the post-Emergency period.)
28 Id. at 39-40.
29 Lloyd I. Rudolph and Susanne Hoeber Rudolph, Redoing the constitutional design: from an interventionist to a regulatory state, in The Success of India’s Democracy 127, 132 (Atul Kohli ed., 2001).
30 The 1975 Emergency was a regime of totalitarianism instituted by Prime Minister Indira Gandhi, and caused the Supreme Court to lose legitimacy by implicitly supporting the regime. For a more detailed explanation of the Emergency, see supra Part II.
vention of religious violence and constitutional protection of religious groups. Section IV will also consider reliance on the trust mechanism as a method of achieving settlement of religious conflicts like Ayodhya. Section V will conclude that despite its imperfections, the judiciary is the most appropriate institution to interpret and protect values of constitutional secularism.

II. Legal Background of the Indian Constitutional Tradition

India’s early leaders reveled in their accomplishment of the extrication of centuries of colonial bondage from British rule. The members of the Constituent Assembly, however, quickly realized that establishing a uniform system of governance in a newborn nation with profuse economic, religious, and social diversity would perhaps prove to be a more formidable task than acquiring the independence itself. At the time of Independence, the constitutional framers struggled to establish equality among their constituents because religious hierarchy was so deeply embedded into the country’s social fabric. Thus, India’s constitutional framers wrestled with the challenging task of providing sovereign expression for a diverse and volatile population. Moreover, the document had to be contextualized in relation to the larger social and political challenges that the country faced. The document’s great length and meticulous attention to detail embodies the tumultuous political and social context surrounding its drafting and enactment.

The framers of the Indian Constitution were especially cognizant of the unique religious divisions plaguing the nation at the time of Independence. One author uses the term “ameliorative secularism” to describe a model of Indian secular constitution because he believes it “seeks an amelioration of the social conditions of people long burdened by the inequities of religiously based hierarchies, [while] embody[ing] a vision of intergroup comity whose fulfillment necessitates cautious deliberation in the pursuit of abstract justice.” By identifying and addressing the significance of the political and social culture that existed in the newborn country, Indian constitutional framers endeavored to create a document that unified the nation.

32 JAMES T. McHUGH, COMPARATIVE CONSTITUTIONAL TRADITIONS 103 (2002).
33 Id.
35 JACOBSOHN, supra note 10, at 94.
A. History of Religious Divisions

In the backdrop of constitutional goals, the history of religious tension in India is highly relevant because it is a long and turbulent history that galvanized centuries of antagonism between Hindus and Muslims. The history of conflict between Hindus and Muslims began before Independence when leaders of the Muslim League demanded a separate homeland and refused to join the Constituent Assembly. Their demand was fulfilled on August 15, 1947 through the promulgation of the Indian Independence Act, recognizing the existence of two independent states on the sub-continent, India and Pakistan that substantiated the British divide-and-rule policy.

The plan required a partition of portions of northern and eastern India to create the Muslim State of Pakistan. The execution of the plan instigated atrocious acts of communal violence between Hindus and Muslims, who became refugees in their own land in order to arrive at their proper countries. Hindus residing within the boundaries of the newly formed Pakistan were strongly encouraged to relocate within the boundaries of India while Muslims traveled westward to Pakistan out of safety concerns and a fear for their lives. The estimates of how many people died vary from 500,000 to 1.5 million, and many scholars have settled upon the figure of one million. Tragically, the glory of the Independence celebration quickly transformed into a catastrophic display of bloodshed and horror as millions of Sikhs, Hindus, and Muslims were uprooted from their homes as a result of the Independence exodus. The atrocious outburst of violence seemingly dwarfed any of the heinous acts of genocide committed in Bosnia or Rwanda. Thus, the history of Partition permanently tainted relations between Hindus and Muslims on the subcontinent.

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37 AUSTIN, supra note 34, at 8.
39 Id.
42 Id.
B. The Constitutional Goal of Unification

From the inception of the Independence movement in India, Mahatma Gandhi and other leaders insisted the country's independence could only be achieved if it rid itself of all remnants of British rule by creating a home-made system of government, and adopting a Constitution to specifically meet the needs of the burgeoning democracy. This gave rise to Nehru's vision of democratic socialism, which aspired to affect a social revolution in India by injecting provisions of social justice and equality into the Constitution. As the first prime minister of India, Nehru was committed to ameliorating the vast social and economic inequalities that existed in India before Independence in order to create a truly democratic and progressive nation. As Granville Austin explains, "The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement."  

C. Secularism in the Constitution

In light of the religious and economic biases existing at the time of Independence, framers of the Constitution aimed to ensure equal justice to all constituents by incorporating specific provisions into the document. Parts III and IV of the Constitution, dealing with fundamental rights and directive principles of State policy, respectively, are among the most relevant in securing social justice and creating a unified constituency. The provisions of Parts III and IV emphasize the need to improve the social and economic conditions of the people by securing a great number of individual freedoms for the citizens. They also emphasize that it is essential to maintain the political unity of the country.

The explicit prohibition of religious discrimination in the text of the Constitution expresses the severity of religious inequality favoring upper class citizens at the time of Independence. Article 15(1) of the Constitution provides that "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them," while 15(2) prohibits discrimination by private entities that provide public accommodations and by public entities funded by State monies. Article 16 ensures equal opportunity in all spheres of public employment, which is

43 For an in-depth look at Gandhi's notion of "swaraj", see AUSTIN, supra note 34, at 1.
44 For more on the Nehruvian goals of social policy, see P.B. GAJENDRAGADKAR, THE CONSTITUTION OF INDIA: ITS PHILOSOPHY AND BASIC POSTULATES 19 (1969).
45 AUSTIN, supra note 34, at 50.
46 GAJENDRAGADKAR, supra note 44, at 15.
47 INDIA CONST. Art. 15.
defined as "any office under the State," and Article 17 abolishes untouchability, the lowest recognized strata of the Hindu caste system.48 Because members of the Constituent Assembly did not believe that Articles 15 through 17 would be sufficient to protect religious minorities, they included Articles 25 through 28, to more specifically address the freedom of religion and to create a unified State.49 While some opponents to the extra articles argued that the additional protections contradicted the constitutional goal of secularism, the framers decided that the meaning of secularism, as contemplated by the Constitution, did not preclude religious protections; rather, it provided a sense of religious harmony.50

One distinguishing feature of constitutional secularism in India is characterized by the State's promise that it will not identify itself with or be controlled by any singular religion. Additionally, the State ensures the right to practice whatever religion one chooses to follow without according any preferential treatment to any of them, and guarantees that no discrimination will be exhibited by the State against any person on account of his religious beliefs.51 Finally, constitutional secularism in India provides every citizen an equal right to enter any office under the State.52

Therefore, the Indian Constitution aims to reverse traditional sources of dispute and discrimination by establishing a constitutional scheme to protect minority interests.53 In India, affirmative or positive discrimination has been written into the Constitution itself because it focuses on not only equality as a right available to all citizens, but emphasizes equality as a policy aimed at changing the structure of society.54 In an attempt to transform ancient beliefs and practices, the framers of the Constitution included specific provisions to facilitate the process of change.55

D. The Role of the Judiciary

Although recognizing the existence of fundamental rights was the first step towards achieving India's social revolution, establishing a legal mechanism for enforcement of those rights was a paramount concern for the

48 INDIA CONST. Art. 16 and 17.
50 Id. at 123.
51 Id.
52 Id.
53 "The quest for political and social unity has been the most important goal of the Indian constitutional tradition." MCHUGH, supra note 32.
54 ANDRE·BETEILLE, SOCIETY AND POLITICS IN INDIA: ESSAYS IN A COMPARATIVE PERSPECTIVE 206-7 (1991).
55 The effectiveness of this transformation is a completely separate question that will be addressed in supra Part III.
nation's early leaders. By making the rights in Part III justiciable, the Constitution inadvertently confers power upon the Supreme Court to safeguard them. While Article 124 of the Constitution creates an independent Supreme Court with original, appellate, and advisory jurisdiction in an integrated national and local system, the Indian judiciary is a unique system; one which has been described as a hybrid system that "join[s] the parliamentary sovereignty of the British model with the judicial review of the US model." Because the Indian system does not adhere to an equal separation of powers system like the American paradigm, the Indian Supreme Court has not always succeeded in exerting its activism. This was especially apparent in the first four decades of the Court's existence, where it was "pitted against the Nehru and Gandhi government's efforts to expand parliamentary sovereignty at the expense of judicial review."

The ongoing battle between parliamentary supremacy and judicial independence in enforcing fundamental rights crippled the Indian justice system throughout the half-century, creating extreme ambiguity in the arena of civil liberties. The institutional dilemma culminated in the mid 1970s during Prime Minister Indira Gandhi's proclamation of Emergency, which led to a brief period of totalitarianism and authoritative rule. Threatened by an electoral mal-practice case against her pending in the Supreme Court, Indira Gandhi declared a state of Emergency on June 25, 1975 on account of internal disturbance threatening the order and security of India. Her fear of losing power compelled her to declare Emergency, during which all leaders of the opposing party were arrested, strict censorship was imposed, and police forces and spies were dispatched to detect any modicum of resistance.

As a result of the declaration, all fundamental rights guaranteed by the Constitution were suspended, including the right to petition the courts for writs of habeas corpus. Consequently, thousands of citizens were indiscriminately detained with no opportunity to seek redress from the courts.

56 See INDIA CONST. Art. 124.
57 Rudolph, supra note 29, at 132.
58 Rudolph, supra note 29, at 132.
59 The institutional struggle entailed the parliamentary abuse of the amendment process to limit the Supreme Court's constitutional power to enforce fundamental rights. In a landmark case, the Court held that certain basic features of the Constitution could not be altered by Parliament. See the discussion of Keshavananda v. State of Kerala in Rudolph, supra note 29, at 133.
60 See generally SACHCHIDANAND SINHA, EMERGENCY IN PERSPECTIVE: REPRIEVE AND CHALLENGE 45-49 (1977). (explaining that Indira Gandhi's declaration of Emergency was fueled by two main events: the pending case before the Supreme Court and the electoral defeat of Congress in Gujarat.)
62 Id.
Ironically, the Supreme Court supported the Emergency regime by ruling that the presidential order suspending certain fundamental rights was constitutional.  

While the Supreme Court’s tacit support of the suspension of fundamental rights during Emergency caused it to lose legitimacy in the eyes of the general constituency, it inadvertently led to the emergence of a resurgent, activist bench. In the aftermath of the Emergency regime, the Indian Supreme Court exerted discernible efforts to safeguard fundamental rights and to consider the interests of the poor and powerless. Since being chastised for its behavior during the Emergency regime, the Court has employed a more active role in enforcing human rights against state abuses including police brutality and rape, and has even extended its activism to public concerns like clean air and water since the early 1990s.

In the case of Chairman, Railway Board v. Chandrima Das decided in January of 2000, the Supreme Court honored its constitutional commitment to promoting human rights against state abuses by reversing a High Court decision ruling against a Bangladeshi woman who had allegedly been gang raped by several employees of the Eastern Railway. The High Court refused to award damages in a civil suit brought by the victim because it held that fundamental rights guaranteed by the Constitution only apply to Indian citizens; thereby precluding the Bangladeshi woman from recovering in this case. However, the Supreme Court reversed the decision and awarded damages on the basis that the right to life and dignity is a universal constitutional safeguard, extending to non-citizens as well as citizens. In a forceful opinion condemning acts of sexual violence, the Supreme Court demonstrated a zero tolerance approach towards government misconduct by forcing the government to accept accountability for the brutality of its employees.

Additionally, the Supreme Court has arguably played the most significant role in actualizing constitutional protections of fundamental rights by standardizing and promoting pivotal concepts of industrial jurisprudence. In fact, the post-Emergency Supreme Court has addressed its responsibility of constitutional interpretation very seriously in recent years and has even magnified seemingly ordinary cases into important constitutional controversies.

63 Id.
64 Rudolph, supra note 29, at 134.
65 Id.
67 Id. para. 6.
68 Id. para. 29.
69 Id. para. 39.
70 See GAJENDRAGADKAR, supra note 44, at 53.
Thus, the Indian Supreme Court's approach towards the constitutional adjudication of fundamental rights is invaluable to this study of constitutional secularism. Because the Supreme Court has demonstrated its strong commitment to upholding constitutional protections, the legitimacy of secular provisions like Article 15 (prohibition of religious discrimination) could best be analyzed through the lens of judicial behavior.

III. The Indian Supreme Court's Approach to Constitutional Secularism

In addition to the religious violence that was triggered by the destruction of the Babri Mosque, a legal dispute questioning the property rights of the site further engenders the gravity of the conflict between Hindus and Muslims. The property dispute over the site between Hindus and Muslims is an ancient controversy dating back to 1853. In 1859, the British colonial administration divided the site by erecting a fence and allowing the Muslims to worship in the inner court and the Hindus to worship in the outer court. After Independence, both parties filed a civil suit in the High Court of Allahabad and the government proclaimed the premises a disputed site and prohibited any type of worship while the case was pending. However, the case was eventually quashed, and the site remained disputed because many Hindus continued to worship on the peripheral areas of the site.

In an attempt to restore communal harmony in the country in the midst of the Ayodhya violence, Parliament, upon the President's request, enacted The Acquisition of Certain Area at Ayodhya Ordinance in January of 1993, which permitted the government to acquire the disputed and undisputed land until the outcome of final adjudication had been determined. While the main premise of the legal action involved a property rights dispute over the 2.77 acres of land where the Babri Mosque had stood, the sixty-seven acres of undisputed land surrounding the mosque had also been transferred to the custody of the Central Government. The undisputed land was primarily seized to ensure that no alterations were instituted on the surrounding plot of land until the Court disposed of the original title suit. The government took control of the peripheral land in order to avoid the outcome of the Allahabad case, where Hindus continued to worship on the adjoining land of the mosque even though the High Court prohibited any worship on the site and adjacent land. Many residents who had legal title to parcels on the

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72 Id.
73 Id.
sixty-seven acre undisputed plot asserted a cause of action to question the constitutionality of the legislation.\textsuperscript{75}

Additionally, Muslim residents attacked the legislation because they believed that by requiring the state of worship on the site to remain status quo, which allowed Hindu worship to continue notwithstanding a government prohibition, the act was slanted towards Hindus and was repugnant to secular provisions in the Constitution.\textsuperscript{76} The Supreme Court disposed of these issues in the 1995 case of \textit{Faruqui v. Union of India}. The term “status quo” in this case provides that management of the area and the state of worship on the disputed land remains as it existed on January 7, 1993.\textsuperscript{77}

\textbf{A. \textit{Faruqui v. Union of India} (1995)}

In its first legal confrontation of the sectarian violence that persisted since the Babri Mosque destruction, the Supreme Court overtly condemned the destructive act. It emphatically explained, “The perpetrators of this deed struck not only against a place of worship, but also at the principles of secularism, democracy and the rule of law enshrined in our Constitution.”\textsuperscript{78} Although the Court affirmed a rhetorical commitment to secularism, its adherence to secularism in resolving the underlying legal issues was not as clear.

On the question of whether the legislation contained anti-secular provisions by maintaining the status quo at the disputed site, the Court employed a comparative analysis of the state of worship on the site prior to the mosque destruction. Because it concluded that “the Muslims have not been offering worship in any place in the disputed site,”\textsuperscript{79} since 1949, the majority held that the status quo provision did not violate Article 15 or Article 25 of the Constitution, which prohibits religious discrimination by private or public entities and ensures religious freedom, respectively. However, the Court failed to acknowledge that the High Court case brought in 1947 prohibited any form of worship on the site and the Hindus were violating a

\textsuperscript{75} It is worthwhile to mention that the Allahabad High Court case and all other pending cases were quashed when the Ayodhya case was brought before the Supreme Court. Unlike the High Court case, the case before the Supreme Court only contemplated the constitutionality of the Acquisition of Certain Area at Ayodhya Act. As noted in Section Two, the Indian judicial system is an integration of the state and federal systems, where the Supreme Court serves as the apex court and the High Court stands at the head of each state’s judicial administration.

\textsuperscript{76} Because Hindu worship had unlawfully persisted on the site even after the High Court prohibited any worship on the site while the case was pending in 1947, status quo was interpreted to allow Hindus to continue worship.

\textsuperscript{77} \textit{Faruqui v. Union of India}, AIR 1995 S.C. 605, 632.

\textsuperscript{78} \textit{Id.} at 613.

\textsuperscript{79} \textit{Id.} at 633.
court order by continuing to worship there. Additionally, the Court undermined the freedom to exercise one's religious practices by allowing Hindus to worship but forbidding Muslims to worship on parts of public property.\(^{80}\)

While wrapping its decision in the language of secularism, the Court allowed the unlawful Hindu worship to continue while precluding Muslim worship near the site by relying on the historical conditions. The history that the Court referenced was based on the disputed theory that archaeological evidence indicates that a temple [at least a building with pillars] had existed on the Babri Mosque site since the eleventh century.\(^{81}\) History reports indicate that even after the mosque was constructed, Muslim leaders permitted Hindus to worship on a platform outside the mosque.\(^{82}\) However, the Court's historic rationale is clearly flawed because the "history" of Hindu worship resulted from a violation of a 1947 court order and the archaeological evidence cited was not proven to be exhaustive.\(^{83}\) The Court performed all types of judicial acrobatics to justify Hindu access to the site by overlooking why Hindus continued to pray on the site after 1949. Thus, the Court's holding in the case does not entirely countenance its commitment to secularism.

Ironically, the Court invoked the constitutional theme of secularism and religious harmony in resolving the second legal question of acquiring private property on the undisputed area. The Court asserted that, "[a]ny step taken to arrest escalation of communal tension and to achieve communal accord and harmony can, by no stretch of argumentation, be termed non-secular much less anti-secular or against the concept of secularism—a creed of the Indian people embedded in the ethos."\(^{84}\) Additionally, the Court rejected the Muslim argument that the acquisition of a mosque is contrary to Islamic law by emphasizing the supremacy of secularism in legal matters.\(^{85}\) The Court's definition of secularism, in this sense, contradicts the Indian definition of secularism as freedom of exercise by suggesting an absence of religion is the real meaning of secularism. In sum, even though the Supreme Court immersed its rationale in the rhetoric of constitutional secularism, its interpretation of the meaning of secularism and the outcome

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\(^{80}\) The actual ownership of the site was the subject of the dispute. But while the case was pending in the Court, the site was theoretically "public" property.


\(^{82}\) Id.

\(^{83}\) See id.

\(^{84}\) Faruqui v. Union of India, AIR 1995 S.C. 605, 633.

\(^{85}\) "Irrespective of the status of a mosque in Islamic country for the purpose of immunity from acquisition by the State in exercise of the sovereign power, its status and immunity from acquisition in the secular ethos of India under the Constitution is the same and equal to that of the places of worship of the other religions." *Id.* at 641.
of the legal questions indicates that secularism and religious equality was not the Court’s primary concern in Faruqui.

In Faruqui, the Court implicitly encouraged judicial defiance by allowing Hindus, who had violated an earlier court holding, to continue worshipping on the site. Why did the Court act as an enabler on one hand, while invoking values of secularism on the other?

The disconnect between the language of secularism deployed by the Indian Supreme Court and the action actually taken is a result of the Court’s own biases. Since the majority of the legal and political elites in the Indian government are a product of Western education, the members of the Court and other legal authorities have had little difficulty in framing the rule of the law as embodied in the Constitution. However, the Court’s effort to rid itself of its own pro-Hindu biases, as well as create an enforcement mechanism to transform deeply rooted social beliefs, has not been as successful. This is readily apparent in the dubious Faruqui decision, where the Court devoted considerable energy to articulate a pro-Hindu rationale, where the more logical approach would have been to adhere to the High Court precedent prohibiting all forms of worship. Bridging the gap of religious equality in theory and religious equality in practice reflects the conflicting forces within Indian political culture and its relationship to constitutionalism.

In light of this perspective, the inherent biases and prejudices embedded into the judicial institution impeded the constitutional goals of secularism and religious equality. More specifically, because religious beliefs are so deeply connected to views on public policy, a strict separatist approach to secularism is not institutionally possible in India. Accounting for the intimacy with which temporal and spiritual realms have been historically entwined in India, the prospect is substantial that important areas of public policy will embody the substance of religious beliefs, at least by the majority. So understood, secularism appears in the form of a radical majoritarianism in the service of an assimilationist agenda.

Since the Indian interpretation of secularism does not connote an escape from religion, rather a freedom of exercise, it is increasingly difficult to undermine the power of religion to weaken democratic forces. Faruqui illustrates that even neutral, well-educated judges fall victim to revealing their majoritarian religious biases when deciding a dispute involving Hindus and Muslims.

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86 "One aspect of this problem is the continued, practical dominance of members of upper castes within the political, social, economic, and legal institutions of India." McHugh, supra note 32, at 105.

87 McHugh, supra note 32, at 110.

88 McHugh, supra note 32, at 105.

89 Jacobsohn, supra note 10, at 55.
B. The Early Polygamy Cases

Conversely, the Supreme Court defeated a majoritarian approach to secularism in the early polygamy cases. By upholding legislation that outlawed polygamous marriages, which was pervasive in Hindu tradition to procure the birth of a son and hedge against reproductive failure, the Court asserted the primacy of social reform measures over religious liberty. In the 1952 case of State of Bombay v. Appa, the Bombay Supreme Court upheld the validity of the Bombay Prevention of Hindu Bigamous Marriages Act of 1946, asserting that "The Hindu Bigamous Marriages Act is attempting to bring about social reform in a community which has looked upon polygamy as not an evil institution, but fully justified by its religion." By prioritizing social reform measures over elements of Hindu personal law, the Appa Court seemed to vindicate a neutral, non-majoritarian approach to interpreting secularism. Even though this decision does not elucidate the Court's behavior towards Muslims or other religious minorities, it demonstrates the Court's ability to remain unbiased when dealing with traditional aspects of deeply held religious beliefs.

However, a closer look at the Court's approach in the polygamy cases does not reflect an unfettered commitment to constitutional secularism, but demonstrates its ad hoc tendency to construe and define religious protection. The outcome of the polygamy cases seems to uphold secular values, but the method of analysis grants complete discretion to the Court to ascertain what religious values should be superceded by public interest measures, and under what conditions this should occur. The Court's self-appointed task of differentiating between expendable and non-expendable religious activity, "allows [it] to deeply encroach into the domain of religious freedom." In this sense, the constitutional adjudication of secularist provisions has facilitated a degree of judicial opportunism by allowing judges to define and decide the scope of religious freedom.

C. Faruqui Revisited

The Supreme Court's ambiguity in its interpretation of constitutional secularism in Faruqui precipitated a further consideration of the issues. In March of 2002 the Court issued an order mandating that no religious activity of any kind by anyone either symbolic or actual including bhumipuja or shila puja (types of worship), shall be permitted or allowed to take place, on any part of the sixty-seven acre undisputed plot. In response to this order, the Central Government filed an application seeking vacation of its interim

91 JACOBSOHN, supra note 10, at 97.
order banning all kinds of religious activity on the sixty-seven acre site. Subsequently, the Court reconsidered the constitutionality of the *Acquisition of Certain Area at Ayodhya Act* of 1993, as amended by the 2002 Supreme Court order in *Mohd. Aslam @ Bhure v. Union of India* in March of 2003.

Unlike its decision in *Faruqui*, the Court in this case assumed a more neutral position in its interpretation of Article 15. While acknowledging that no title rights are in dispute over the sixty-seven acre plot, and admitting that not allowing real property holders to worship on their own land was in some sense a denial of rights, the Court emphasized that the restriction is necessary to ensure that “the final outcome of adjudication should not be rendered meaningless by the existence of properties belonging to Hindus in the vicinity of the disputed structure in case the Muslims are found entitled to the disputed site.” The Court’s brilliant insight preemptively avoided a potentially abusive situation: if the Muslims were held to be the rightful owners of the 2.77 acres of the disputed site (where the Babri Mosque had stood), the Hindus could have denied access to the Muslims’ rightful property if they were permitted to maintain control of their private property on the 67 acres of undisputed land surrounding the disputed site. Thus, the Court’s forward looking decision that required Hindus to temporarily relinquish control of property on the undisputed site, was the only way to guarantee a fair outcome for Muslims.

Exhibiting a stark divergence from its rationale in *Faruqui*, the Court seriously addressed the issue of fairness to the Muslim minority by prohibiting any religious activity on the undisputed site in order to guarantee a just result of the impending issue involving the disputed site. This time, the Court invoked notions of secularism accurately to justify its deference to the religious minority. In fact, the Court rationalized temporarily seizing private property [the undisputed site] by relying on the goals of secularism:

> Even though, *prima facie*, the acquisition of the adjacent area in respect of which there is no dispute of title and which belongs to Hindus may appear to be a slant against the Hindus, [i]t is not so since it is for the larger national purpose of maintaining and promoting communal harmony and in consonance with the creed of secularism.

For the first time since the beginning of the Ayodhya controversy, the Court interpreted secular provisions in accordance with the Framers’ original understanding of freedom of exercise. The Court’s analysis clearly reflects a commitment to protecting the rights of the Muslim minority. Additionally, the Court epitomized neutrality and professionalism by taking both Hindu and Muslim concerns seriously.

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93 *Id.* para. 13.

94 *Id.*
In light of the Court's shift against Hindu worship on the undisputed site, and adherence to the no worship rule of the 2002 order, it is worthwhile to explore whether *Mohd. Aslam* is paradigmatic of a more neutral, tolerant Supreme Court that is committed to achieving constitutional secularism or if it is another example of the Court employing goals of secularism to propagate its own political agenda.

D. Ayodhya Today

Since its 2003 decision in *Mohd. Aslam*, the Supreme Court has permitted the Central Government to establish a joint trust, The Ayodhya Jama Masjid Trust ("AJMT"), comprised of Hindu and Muslim trustees who are responsible for proposing amicable solutions to the land dispute to the government. The AJMT signifies a major breakthrough in resolving the long-lasting conflict between Hindus and Muslims by promoting open communication. In recent months, the AJMT has urged Prime Minister Vajpayee to execute the Ayodhya Act, which provides for construction of a temple, a mosque, and other facilities at the acquired land (the disputed site) in Ayodhya.95 Many Indian leaders believe that the Supreme Court’s commitment to secularism in the Ayodhya legal disputes memorialized a fresh, harmonious social climate in Ayodhya, where Hindus and Muslims will be able to worship together. In a recent news article, Deputy Prime Minister Advani, a crucial figure for the BJP party, supported the construction of both a temple and a mosque on the acquired site: "I am sure that we will use whatever persuasive power we in the government and in the BJP have over those who had launched the movement for Ram Temple at Ayodhya to participate in any amicable settlement on Ayodhya."96

The new air of cooperation is not completely divorced from politics, since some reports indicate that the upcoming election is the BJP’s driving force in reconciliation with Muslims over Ayodhya and is merely a campaign measure to appeal to Hindu and Muslim voters alike.97 BJP leaders are cognizant that the Ayodhya violence will always be a part of its ideological personality, and are attempting to dissociate the party’s connection to violence in Ayodhya as the election mood spreads throughout the country.98 Because the Ayodhya case is deeply connected to political power, the Supreme Court’s commitment to constitutional secularism is more accu-

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97 The election took place in May 2004, where the Congress Party defeated the BJP on account of a dramatic voting effort by the rural poor in India.
rately ascertainable in an independent context. More specifically, investigat-

gating case law outside of the Ayodhya sphere provides an answer to the

testion of whether the Court is invoking goals of secularism to belie its

own opportunistic behavior.

E. Beyond Ayodhya

The legitimacy of the Supreme Court’s commitment towards constitu-
tional secularism is more accurately ascertainable in case law arising after
the mosque destruction, but unrelated to the property dispute case. The
Court’s commitment to constitutional secularism was put to the test shortly
after the mosque destruction, in May of 1993, when it was approached by a

group of Muslim imams—individuals in charge of religious activities of

respective mosques. The imams brought a petition challenging ancient Is-
lamic religious practice that denied imams any form of monetary compensa-
tion because Islamic law, imposed by local government officials, required
them to offer voluntary service. In *All India Imam Organisation v. Union of
India & Ors.*, the Supreme Court demonstrated its ability to uphold its con-
stitutional obligations by disregarding Islamic personal law and protecting
the constitutional rights of the imams. According to the Court, the rights of
the imams must be interpreted in context of modern constitutional protec-
tions, and not ancient deep-seeded beliefs. The Court explained, “In series
of decisions rendered by this Court it has been held that right to life in Ar-
ticle 21 means right to live with human dignity. It is too late in the day,
therefore to claim or urge that since Imams perform religious duties they are
not entitled to any emoluments. Whatever may have been the ancient con-
cept but it has undergone change.”

The Court’s approach in this case seems to reflect a major break-

through towards constitutional secularism: in a time where anti-Muslim
sentiments were at its peak, the Court exhibited no signs of pro-Hindu bi-

ases and gave real meaning to constitutional protections. Although *All In-
dia Imam* was not a conflict arising from a controversy between Hindus and
Muslims, it signified the Court’s progress in shedding anti-Muslim biases
and seriously contemplating the interests of a religious minority. As one
author explains, “Making the prospects for such creative jurisprudence more
promising is the fact that the majority emphasized the supremacy of Indian
courts, rather than Muslim law as interpreted by Muslim legal authorities, in
determining the essentials of Islamic practice.”

Notwithstanding the Court’s progress in giving real meaning to secu-

larist constitutional provisions in cases like *All India Imam Organisation*, a

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100 JACOBSOHN, supra note 10, at 258.
strict separatist approach towards secularism is not supportable in a nation like India, where religious beliefs saturate the social ethos of the culture. Thus, the Court should not have unlimited authority to intervene in religious matters. One lawyer, who represented the Muslim side in the Ayodhya litigation, claimed:

the Court’s verdict that the right to pray at a mosque (as opposed to prayer in the open) was not to be regarded as a constitutionally protected practice of particular significance must gnaw at the roots of any version of plural secularism, surrendering the property and practice of a faith to extensive interference by the State and annihilating the diversity of local practices which make the Indian subcontinent what it is.101

These remarks illustrate the challenges facing the Indian Supreme Court: how does it strike a balance between allowing citizens to exercise their freedom of religion without infringing on others’ rights to be free from the imposition of religion?

The Supreme Court encountered this precise issue in a 2002 case invoking Article 28’s prohibition on religious instruction in public educational institutions.102 In Roy v. Union of India, the Court held that teaching religion in State-funded schools was not a violation of Article 28 because an effort “to educate children to understand the common factors in all the religions is not a non-secular step.”103 In fact, the Court intrepidly asserted that imparting accurate knowledge of all religions to the nation’s youth will be a solution to the problems of religious strife, and will ultimately eradicate non-secular sentiments throughout the country.104 The Court attempted to achieve its balancing act by relying on traditional notions of secularism and religious equality:

The real meaning of secularism in the language of Gandhi [means] equal treatment and respect for all religions, but we have misunderstood the meaning of secularism [to mean] negation of all religions [ . . . ] Democracy cannot survive and [the] Constitution cannot work unless Indian citizens are not only learned and intelligent, but they are also of moral character and imbibe the inherent virtues of human-being such as truth, love and compassion.105

While the Court tipped the balance in favor of religious education in Roy, perhaps the trying responsibility of achieving a fine balance indicates that the courts are not the best-equipped institutions to promote secular

103 Id. para. 85.
104 Id.
105 Id. para. 84, 86.
goals. Additionally, by overstepping its judicial authority, excessive intervention has the ability to undermine judicial legitimacy. Even when justified, these interventions have the potential to damage the institutional legitimacy of the Court by questioning its role as a neutral arbiter in matters central to people's fervently held beliefs.\textsuperscript{106}

\textbf{IV. The Non-adjudicative Trust Mechanism}

\textbf{A. Alternate Dispute Resolution in Ayodhya}

Are there alternative forums to time consuming and expensive court proceedings that can resolve religious disputes? The rules relating to arbitration were most recently enumerated in the Indian Arbitration & Conciliation Act of 1996, which is based on the Model Law on International Commerce Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL).\textsuperscript{107} The legislation reflects the first time that India has seen a single law applicable both to international and domestic arbitrations. Furthermore, it repeals the Indian Arbitration Act 1940, the Arbitration (Protocol and Convention) Act 1937 and the Foreign Awards (Recognition and Enforcement) 1961, which previously governed the law of arbitration in India.\textsuperscript{108} In a commercial context, the new arbitration laws were intended to accommodate the needs of foreign investors and businessmen by guaranteeing an expeditious settlement of legal disputes in contrast to India's backlogged legal system.\textsuperscript{109} The 1996 Indian arbitration laws do not contain a catalogue of disputes that are arbitrable, and only contains a general provision stipulating that the new law will not supersede existing law that prohibits arbitration of certain disputes.

In light of the liberal scope of arbitration laws, issues involving a religious dispute like the Ayodhya case, are not beyond the purview of domestic or international arbitration in India. Notwithstanding the benefits of time and reduced expenses, cases involving secular constitutional provisions involve the protection of such fundamental rights that an alternate forum of resolution presents a great risk in safeguarding these freedoms. One author identifies some of these risks:

\begin{quote}
[i]t is self-evident that constitutional disputes cannot be referred to arbitration under any circumstances. The framers of the Constitution intended it to be interpreted only by the Supreme Court and the various High Courts;
\end{quote}

\textsuperscript{106} JACOBSOHN, \textit{supra} note 10, at 258.


\textsuperscript{109} Id. at 117.
allowing an arbitrator to decide such matters would amount to a violation of the basic structure of the constitution.\textsuperscript{10}

Therefore, the unprecedented use of binding ADR measures in disposing of constitutional issues may be too novel of a method to apply to the Ayodhya dispute.

\textbf{B. Mediation and Third-Party Intervention}

The January 2004 summit of the South Asian Association for Regional Cooperation in Islamabad, Pakistan marked a major step forward in building the road to peace and establishing a mechanism of trust between India and Pakistan.\textsuperscript{111} UN Secretary General Kofi Annan identified an important by-product of improved relations between India and Pakistan as not only reducing political tension, but also improving economic and social conditions through the region.\textsuperscript{112} The emergence of a cooperative climate between the two nations makes the role of mediation and neutral third-party intervention an even more promising solution to resolving the Ayodhya property dispute. Relying on a non-adjudicative trust mechanism to settle the property dispute initially seems like an effective and efficient solution.

In late January 2004, the Dalai Lama, a Tibetan spiritual leader, offered to mediate the issue as an objective third-party.\textsuperscript{113} The Dalai Lama’s integrity and stature as a spiritual leader, and absence of personal stake in the issue (he is Buddhist and is affiliated with neither religion) make him an excellent candidate for the job.\textsuperscript{114} While Hindu and Muslim leaders have welcomed the Dalai Lama’s offer of mediation, a negotiated settlement has not yet materialized between Hindus and Muslims.\textsuperscript{115} The Dalai Lama has insisted that the Hindu and Muslim communities must demonstrate mutual trust and respect for each other in order to reach any type of agreement.\textsuperscript{116} However, the leader’s attempt to reverse basic attitudes and beliefs that created and aggravated the dispute in the first place may be an almost impossible task.\textsuperscript{117} Given the severity of religious tension between Hindus and

\textsuperscript{10} Id. at 124.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
Muslims in India, a third party intervention may be neither effective or authoritative enough to permanently resolve the issue in Ayodhya. Furthermore, enforcing a solution that was facilitated by a third party foreigner poses great long-term challenges.

A more commanding source of mediation like a UN backed intervention may prove to be more effective in resolving the Ayodhya dispute. In fact, the religious tension between Hindus and Muslims was brought to the attention of the UN as early as 1949, when the UN established the United Nations Military Observer Group in India and Pakistan ("UNMOGIP") to supervise the ceasefire temporarily agreed upon by India and Pakistan in the states of Jammu and Kashmir, a mountainous region straddling the neighbors' northern regions whose boundary disputes have caused two wars between the countries. However, the UN's unsuccessful efforts in resolving the Kashmir dispute has generated skepticism among Indian officials who perceive the UN to be a highly political institution that capitulates to prevailing political considerations. Additionally, the Indian Government has insisted that bilateral negotiations between India and Pakistan represents the most effective method to settle the Kashmir dispute because it will consider the needs of the people of Jammu and Kashmir rather than internationalize the issue. Thus, the UN's approach towards the Kashmir problem has caused South Asians to lose faith in the institution's mediating powers.

Since the issue in Kashmir is still pending despite UN involvement, it is likely that Indian officials will be reluctant to seek UN assistance in resolving the Ayodhya property dispute and will aspire for internal resolution of the problem. Additionally, the dispute in Ayodhya is not a conflict between two States; rather a problem between two groups within the same country. Thus, the UN may encounter procedural limitations in establishing jurisdiction over the dispute.

C. Indispensable Judiciary?

India's best chance of settling the Ayodhya dispute is through internal resolution and not turning to the international community for an answer. Even though third party mediation is an appealing alternative to litigation, it is very likely that neither Hindus nor Muslims will comply with the decision of an outside party who lacks institutional authority within the country. However imperfect, the judiciary is ultimately the most appropriate institu-
tion to interpret and adhere to nuanced Indian secularism because it is best equipped to perform the balancing act between constitutional values and social beliefs. Additionally, it possesses the truth-seeking and moral authority needed to enforce any type of settlement in Ayodhya. Since the Court’s decision in *Mohd. Aslam*, the Court has greatly evolved by ridding itself of institutional biases and has revived an understanding of constitutional secularism that the Framers of the Indian Constitution originally envisioned. The Court’s approach in resolving the Ayodhya dispute since *Faruqui* affirms its ability to remain neutral and protect the freedom of exercise for religious minorities. In the face of political pressure exerted by members of the BJP, the Court has honored its dedication to preserving constitutional secularism. The Court’s protection of religious minorities in other issues outside of the Ayodhya controversy support its understanding of constitutional secularism.

This does not suggest that the judiciary is the sole actor in the process of constitutional interpretation, rather, it supports the theory of a “collaborative constitutional enterprise.” This type of process allows an active assertion of judicial review by the Court without conferring upon it a power of ultimate finality in constitutional interpretation. However, the collaborative process “does not require relinquishment of primary institutional responsibility for clarifying and elaborating meanings that define the nation, but it does argue for humility and restraint.” If the Court is able to exercise a level of judicial modesty in acting as the final interpretive authority, then the peril of losing institutional legitimacy will also diminish.

V. Conclusion

Upon exploring the benefits and detriments of the judicial role in settling religious disputes and protecting secular values, the Court has redeemed itself from its *Faruqui* days and has reemerged as the most equipped institution to preserve goals of constitutional secularism. In the aftermath of Ayodhya, many constitutional scholars have suggested a need for a “constitutional revolution” to bridge the gap between the “written” and “unwritten” Constitution in order to eliminate social inequalities and circumscribe judicial opportunism. However, this type of complete revolution will never exist in the context of Indian secularism because social life can never be totally dissociated from the loaded religious environment in In-

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122  *JACOBSOHN, supra* note 10, at 249.
123  *Id.*
124  *Id.* at 233.
The Indian Constitution clearly supports these transformations, but only in attenuated forms, because balancing its commitment to democratic values and its cognizance of religiously based affiliations preclude their total revolutionary grasp. Moreover, the existence of at least a small gap between aspiration and achievement may facilitate a more sensitive political climate to promote values of constitutional secularism.

Additionally, the threat of judicial overreach into areas of privately held religious beliefs does not pose as great a concern as it did in the pre-Ayodhya era. Having endured shocking episodes of communal violence, the Supreme Court vindicated its dedication to constitutional values of secularism. In fact, committed secularists have little to fear from judicial supremacy, since the courts have proven to be the institution responsible for reviving and defining the essence of Indian constitutionalism in cases like Mohd. Aslam. The Supreme Court's behavior in the wake of the Ayodhya controversy illustrates its capacity to balance competing interests of constitutional protection and religious liberties in order to salvage homemade secularism in a nation born with aching religious diversity.

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125 Id. at 234.
126 Id.
127 Id.
128 Id. at 259.