

HINDUISM AND THE GENEALOGY OF CULTURE: SOVEREIGNTY, RELIGION, AND AUTHORITY IN INDIA

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Submission date: 15 March 2023; Acceptance date: 30 December 2023; Publication date: 26 June 2024

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Abstract: The article is an attempt to unpack the famous “Hindutva verdict” of 1995, by specifically paying attention to the construction of culture and its relationship with Hinduism in India. The verdict opens up an avenue to think afresh about the relationship between the state and religion in the context of Hinduism, supporting me to argue that the question of (religious) authority for Hinduism is distinctly connected to secular sovereignty unlike in the case of Islam or Christianity. This in turn suggests that there is no authoritative distinction between Hinduism and Hindutva since these discourses are the products of the state’s ongoing effort to define Hinduism as the context demands. The practice of the state in authorizing acts, attitudes, norms, and sensibilities that are deemed Hindu is encased in the construct of culture and its various enunciations such as legal and rhetoric. One must attend to the genealogy of culture in order to understand the nature of authority in Hinduism as well as the form of sovereignty recognized and exercised in India.

Keywords: Hinduism, culture, authority, genealogy, religion, law, Hindutva

Introduction

The “Hindutva verdict,” as it was famously called, authored by Chief Justice J.S. Verma in 1995 in the case of Dr. Ramesh Yeshwant Prabhoo vs Shir Prabhakar Kashinath Kunte provides a key insight into how the secular sovereignty in India works. The article, attending to the insight offered by Verma in his judgment,

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www.plutojournals.com/reorient

DOI:10.13169/reorient.8.2.0174

advances an initiative in thinking about the question of culture genealogically. Beyond the scholarly efforts to unpack this verdict, which are primarily occupied by the concern about the conflation made by Verma between Hinduism (religion/culture) and Hindutva (political ideology), my curiosity is in why the notion of culture is so important to the grammar of Hinduism, unlike other traditions that the law usually classes as “religions”? Moreover, if Hinduism was a culture, what is its relationship to the state? If the notion of culture was the outcome of a specific historical and colonial project of translation in India (Birla 2009), one must look at the implications of what “culture” means to law in dealing with issues identified as “Hindu” in post-colonial India. I take up this question in the context of the “Hindutva verdict”, adjudicating a litigation against Bal Thackeray, a popular leader of the self-proclaimed Hindu organization called Shiv Sena of Maharashtra, for delivering a “sectarian speech” in an electoral campaign in 1987. I make three major claims in this process. The first one is the existing argument that the state unfairly intervenes in religious matters in the case of Hinduism obfuscates the fact that Hinduism is not a discourse authorized outside the secular juridical confines of the state in India. In other words, the state authorizes acts, attitudes, and discourses that are Hindu. The second point is that the category of culture is a colonial modern construct with a specific use in the post-colonial context. I am not much invested in unpacking the colonial genealogy of culture, as my focus is more on the post-colonial legal use of the same. Here culture appears to me as it was used in the court verdicts. The third and most important argument is that the uses of culture are meant to help the state, especially its judicial institutions, to perform two tasks: 1) it is to justify the state’s authority in matters that concern “Hindus” in terms that are deemed religious and otherwise, 2) it is to reinstate itself, at the same time, as secular sovereignty with the effects of power over other “religions.”

This is particularly important for any discussion concerning Islam, Muslims, and Islamophobia since the relationship between state and religion is not always the same everywhere. In my inquiry, what unfolded to me was that the so-called Muslim question in India, as it was famously called, emerges from the state’s attempt at domesticating the authoritative discourses on Islam whereas, in the case of Hinduism, the state itself is the sovereign and the authority at the same time. In other words, the state and its judicial institutions frequently face a pressing need to define what Hinduism is and who Hindus are: a need that is absent in the case of Islam and Christianity. That’s to say, the state is always in need to make an ontological enunciation of Hinduism, which is uncommon in the case of other traditions. This crucial difference is often overlooked in the scholarship which argues that the state interferes with the matters of Hinduism, as it does with Islam. The problem with this argument is that it operates within the general construction of religion,

without paying much attention to its relationships of power, that is in continuous circulation due to the primacy of secularism. However, my attention is exclusively focused on the case of Hinduism, in particular, on how the construction of culture was indispensable to the trajectory of secular sovereignty of the state in India.

Hinduism/Hindutva as Culture

Shiv Sena is a Hindutva political outfit concentrated in the Maharashtra state of India. During a state election campaign in 1987, Bal Thackeray, the undisputed leader of Shiv Sena, delivered a public speech in support of an election contestant named Ramesh Yeshwant Prabhoo from his party. Thackeray stated in the speech, “we are fighting this election for the protection of Hinduism; therefore, we do not care for the votes of the Muslims. This country belongs to Hindus and will remain so” (*Prabhoo vs Kunte* 1996: paragraph 6). In another speech, he proclaimed that anybody who stands against the Hindus should be shown or worshipped with shoes,” which was found to be a violation of 123(3) of the Representation of the People Act by the Bombay High Court. Its section 123(3), specifically mentions the context of the election in which it states that an act of promoting enmity between classes of people based on religion in connection with the election is an offense (*Prabhoo vs Kunte* 1996). However, the High Court verdict was challenged by Prabhoo in the Supreme Court, against the claim that Thackeray asking for votes on the grounds of religion is a violation of the said act. According to Prabhoo, Thackeray’s speech in no way amounted to an appeal for votes on the grounds of religion, since what Thackeray meant by Hindutva was “the Indian culture and not merely the Hindu religion” (*Prabhoo vs Kunte* 1996: paragraph 15). The SC agreed with this argument, despite upholding the Bombay High Court’s conviction on whether the speech contained the elements of enmity.

In another instance, Manohar Joshi, a BJP–Shiv Sena candidate declared in his speech that, “Hindu Rashtra will be established in Maharashtra” (*Joshi vs Patil* 1996). It was similarly found to have constituted what the Bombay High Court called “corrupt practices” under the act of Representation of the People Act. However, the SC dismissed the complaint on technical grounds and agreed with Joshi’s argument that Hindutva is not a religion, but a way of life (*Joshi vs Patil* 1996: paragraph 58). The court statements in both verdicts stood out, causing a furor among activists, scholars, and civil society members about the fate of Indian secularism. Much of this furor was about SC’s conflation of Hinduism and Hindutva, which was thought to be harmful to the religious sentiments of Hindus who were not part of the BJP or Shiv Sena. One of the SC’s statements which invited much criticism is as follows.

These Constitution Bench decisions, after a detailed discussion, indicate that no precise meaning can be ascribed to the terms “Hindu”, “Hindutva” and “Hinduism”; and no meaning in the abstract can confine it to the narrow limits of religion alone, excluding the content of Indian culture and heritage. It is also indicated that the term “Hindutva” is related more to the way of life of the people in the sub-continent. It is difficult to appreciate how in the face of these decisions the term “Hindutva” or “Hinduism” per se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry, or be construed to fall within the prohibition in sub-sections (3) and/or (3A) of section 123 of the RP Act. (*Prabhoo vs Kunte* 1996: paragraph 134)

In other words, the verdict crucially entailed a legitimization and declaration of the distinction between “religion” and “Indian culture and heritage.” Therefore, Hindutva cannot be constrained by any definition of religion or its various rhetorical sub-themes such as fundamentalism. In analyzing this statement, A.G. Noorani wrote, “Hinduism may be hard to define. Not so Hindutva, unless, of course, one identifies it with Hinduism. Justice Verma does just that” (Noorani 2006: 80). But apart from making this distinction clear, Noorani finds it baneful for secularism to equate Hinduism as such with Indian culture since India is multicultural in its makeup (ibid. 83). In other words, Noorani wants the SC to recognize that the national identity is not solely dependent on one culture, but many. However, Noorani does not find it important to pay attention to the very construction of culture in the legal discourse. More about this later.

But what is notable for now is SC’s otherwise routine concern for the political sphere to be cleansed from religion. For instance, in another context, using the opportunity of Babri Masjid demolition,¹ and upholding the presidential proclamation of dismissing three BJP-ruled state governments, Justice P.B Sawant and Justice Kuldeep Singh made the following statement quoted in Sen (2007: 8), “Whatever the attitude of the State towards the religions, religious sects, and denominations, religion cannot be mixed with any secular activity of the State”. In this exclusivist definition of secularism, in which the state must be distanced from religion, the SC does not seem bothered about whether Hinduism is a religion or not, and if it is not whether it can intervene in politics. Similarly, in a judgment made way earlier in 1966 in relation to lower caste people’s entry to Swaminarayan temple, the court against the pleading of the Swaminarayan sect that they wanted to be recognized as a distinct denomination so that the rules regarding caste would not apply to them, stated that all such denominations would come under the larger purview of what is called “Hinduism” (*Sastri Yagnapurushadji vs Muldas Brudardas Vaishya* 1966: 1119). This was one of the earliest instances in which SC ensured that it has the power to define what Hinduism is. In the latest

pronouncement of the same provision in the wake of the controversy around women's entry to Sabarimala, a Hindu temple in Kerala, the SC observed that the temple's denominational rights to manage its own internal affairs, under Article 26(b) was subject to the State's social reform mandate under Article 25(2)(b). Therefore, the court's ruling that allows for the women's entry to Sabarimala should be upheld. In the case of Hinduism, it is the social justice that must be privileged, not religious sentiments, since Hinduism was already conceptualized as more than a religion. In section b of Article 25, the constitution proclaims

Nothing in this article shall affect the operation of any existing law or prevent the State from making any law providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. (Constitution of India, Article 25)

In the clause added, the constitution declared that "the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly" (Constitution of India, subclause (b) of clause (2)). In these accounts, we clearly have a picture of how Hinduism or Hindutva emerged as more than a religion, hence unaccounted for in the conventional conception of secularism in the legal discourse. This also means that Hinduism, if a culture and a way of life proper, shall be discounted from any secular constraints on religions in general (e.g., RPA).

In a recent (2016) petition filed by activist Teesta Setalvad along with two others, requesting to clarify the SC's current position regarding the early verdict on seeking votes on the ground of Hinduism, the SC made it clear that it will not overturn or amend Justice J.S. Verma's judgment made in 1995 that contained the definition of Hindutva as a "culture," "a way of life", and a "state of mind", not a "religion". Headed by T.S. Takur, the SC Bench nevertheless upheld the Representation of the People Act, clarifying that no intervention of religion in the sphere of politics will be entertained (Latest Laws, 2016).

This shows that constitutional secularism, while presupposing religion as an epistemological object, in its legal procedure refuses to capture Hinduism in a similar register. Coming back to the Representation of the People Act, which bans religious intervention in electoral politics, I want to note SC's interpretation of the question of "whose religion" to address what constitutes the offense in the speech. In other words, is the religion in question that of the speaker, or the voter, or anyone associated with the candidate? In the *Abhiram Singh vs C.D. Commachen* case dealt with in 2017, the majority of the Bench held that the religion in question meant the religion of the candidate, his agents, voters as well as any other

person who brought up the question of religion with candidate's consent (*Abhiram Singh vs C.D. Commachen* 1996). However, three judges on the Bench registered their dissent by arguing that "his religion" should not mean the religion of the voters or the audience. It must only mean the religion of the candidate. This is because invoking the audience's/voters' religion on the premise that they have faced injustice based on their religious identities and therefore their identities must be acknowledged should not be penalized. This note of dissent seems to be important as Muslims in India in particular, along with lower caste communities such as Dalits, have been living in a backward and often oppressed condition for quite a long time. Therefore, appealing to their identities must be understood in relation to the context of social justice. Nevertheless, the majority of the SC Bench regarded the note unworthy of any attention.

Hinduism and the Question of Authority in India

In what follows, I want to think about the question of authority in Hinduism in relation to the state. One of the striking points to note from the cases mentioned above is that Hinduism (or *Hindutva* for that matter – since there is no strict division made between the two in these verdicts) stays undefinable. This un-definability, which makes it difficult to think about the state's intervention in affairs attributed to Hinduism as "external," is quite fateful to the existence of Hinduism in India. In other words, the lack of the definition (or definability) challenges the state's status as an "external" agent in relation to Hinduism. The state does not have an authorized boundary to consider when it exerts legal advances on Hinduism, rendering itself an authority. However, it has now been acknowledged that secularism operates in its own production of religious differences – religious formations as bounded by definition produced by the secular power, thanks to the works by scholars like Talal Asad (2003) and Saba Mahmood (2015). In other words, a differentiation of religion as a bounded domain of private belief and rituals has always been held principal to the existence of secularism in legal and political spheres universally. Such definitions are, therefore, assumed to be a secular production.² While this is true concerning other traditions, the constructed lack of a definite conceptual boundary in the context of Hinduism raises questions about such assumptions regarding the relationship between state and religion.³ Again, one needs to keep in mind that both a definition and the lack of a definition concerning religious traditions are equally secular productions, but for different purposes.

In a major recent SC verdict allowing women's entry to the Sabarimala temple in Kerala, there was one dissenting note made by Justice Indu Malhotra that seems curious in retrospect. The only woman on the Bench, she argued, "notions of rationality cannot be invoked in matters of religion", and "religious practices can't

solely be tested on the basis of the right to equality. It is up to the worshippers, not the court to decide what's religion's essential practice" (*Indian Young Lawyers Association vs The State of Kerala* 2018: 28). She also added that the present judgment made by the SC with her dissenting note has wider ramifications (to other religions too), since issues of such religious sentiments should not be interfered with. As it is obvious, she is seeking a universally feasible definition for Hinduism as a religion, like Islam and Christianity, by using terms such as "religious practices" as against "rational" judgments, "worshippers" as against "social justice", etc. Tasked with a secular function of defining religion, Malhotra's note of dissent must therefore be understood as an attempt at a secular intervention from the side of the SC, unlike how it was dubbed otherwise in the popular parlance. If Malhotra's note of dissent against the court verdict allowing women's entry to the temple was a secular intervention, what are the consequences of conceptualizing Hinduism as a culture by the SC here?

The idea of "way of life" has often been described in terms of culture, as we saw in the cases cited above. Usually judges in many cases appeared mobilizing culture as a term contrastive to or more than religion in their verdicts and statements. The famous secularism debate in India crucially misses any productive engagement with the category of culture, notwithstanding the discursive power the term exerts on many legal disputes.⁴ The idea of "way of life" and "culture" are often used as synonymous in legal parlance. Therefore, according to Judge J.S. Verma in his 1996 verdict, the speech that proclaimed that Shiv Sena will establish a Hindu Rastra in Maharashtra does not amount to an offense as detailed in the Representation of the People Act, since establishing Hindu Rashtra is a statement only with "cultural," not "religious" fabric. The assumption is that culture does not have a definability but religion does, and therefore culture does not constitute a sectarian sentiment to violate the RPA. This approach, I note, is crucially connected with Article 25(2)(b) in the Constitution which allows for the state's intervention in matters identified as those of Hinduism based on the concern for social justice. Article 25(2)(b) presupposes that Hinduism is deeply ridden with social evils such as the caste system, unlike other religions, thus necessitating legal intervention to reform the same. This means that the category of culture here, used to designate Hinduism as more than or nothing like a religion, is in a way entangled with the idea of social justice in the context of caste. The constitutional conviction that Hinduism needs legal intervention to be reformed because of the rigidity of the caste system demanded a translation of Hinduism as something other than a religion, lending credence to the legal use of the category of culture. This transformation of Hinduism needing reform based on the concerns for social justice to the idea of culture that is undefinable in terms of religion and therefore potentially not in need of reform is crucial in the trajectory of law in India. But to

clarify this, we need to unpack the ways in which the state became the authority in the affairs of Hinduism unlike in the case of Islam and Christianity. This will further demand an unfolding of the genealogy of “culture” and what it does to law.

In his essay titled “Supreme Court and the Quest for Rational Hinduism” (2010), Ronojoy Sen examines some of the early verdicts made by the SC to ascertain the essential aspects of the Hindu religion in order to adjudicate cases related to religious property and institutions. In the process, he argues that the SC tends to rely on the idea of essential practice doctrine by way of interpreting religious scriptures in particular and practices in general. By determining religion’s essential practice in this way, according to Sen, the SC proposes a rational Hinduism against unruly one or what Singh calls popular Hinduism, and thus attempts to discipline it (Sen 2010: 87). One of the difficulties with this argument is, that Sen presupposes an idea of religion – Hinduism – that was already in existence independent of the state for SC to re-interpret and discipline in line with its rational priorities. In other words, Hinduism was here imagined to have been defined outside the purview of the interventions of the state. In addition, the categories of rational and irrational here can only be sustained against a particular definition of religion that is presumed universal. Moreover, the idea of popular Hinduism, which he thinks the state is trying to discipline in favor of what he calls “high Hinduism”, is not a helpful category here. It is simply because the state’s intervening power (which I call “authorizing power” as further elucidated in the following) in Hinduism was legitimized by Article 25(2)(b). Article 25(2)(b) essentially states that Hinduism requires reform due to its attendant evil of caste. This complicates Sen’s dichotomy of popular Hinduism vs high Hinduism because the popular Hinduism here was assumed to fall outside the structure of caste. Article 25(2)(b) will thus have to be read as part of the state’s conspiracy against the so-called “popular Hinduism.” If popular Hinduism was devoid of the “evil of caste” and thereby delegitimizes any attempt from the state to “discipline” it, the evil of caste would have to be read as constructed by the state as part of exercising “essential practice doctrine.” The “essential practice doctrine” is meant to give the state the constitutional right to decide on what is essential to a religion and what is not. Sen however does not clarify his position on this, but instead, seeks to uphold such a problematic dichotomy of “high Hinduism” and “popular Hinduism” in order to corner out the state as the culprit. What Sen thinks to be “religion,” that the state was charged with interfering with, will thus be the name of “popular Hinduism.” Consequently, 1) Sen will have to respond to the much-touted (and indeed problematic, for reasons that I propose later in the paper) gap between the modern definition of religion and the life worlds of folk or popular Hinduism and 2) to the state’s interpretation of Hinduism as “culture” and “way of life of the Indian people” in the context of J.S. Verma’s verdict, or maybe the very characterization of Hinduism as culture in the public discourse.

Similarly, in her essay concerning the question of temple property and its management in South India, Deepa Das Acevedo writes,

The mechanism for governing temples and other Hindu endowments reflects a set of national principles concerning the relationship between religion and state. First, secularism in India implies non-establishment and religious freedom, but it does not require non-interference or evenly distributed interference. Second, the state is obliged to exercise both 'external' regulation (that is, the administration of the institution) and 'internal' regulation (the interpreting, limiting, or prohibiting of particular practices). External regulation is frequently explained via the historical obligations of rulers towards temples and is undertaken at the level of states, whereas internal regulation is tied to the nation's need to control potentially destructive aspects of religion and is done at the level of federal institutions (legislature, judiciary, constitution). (Acevedo 2016: 849)

In this interpretation of the relationship between the state and the religion in the post-colonial context, Acevedo presupposes Hinduism as existing independent of the state.⁵ The idea of "external regulation," that is to be undertaken by the "state" and the ways in which it differs from "internal regulation" is not compatible with the fact that Hinduism is not capacitated to authorize itself as a religious tradition. A presumption about "external regulation" entails that Hinduism has an internal coherence until intervened by the state. It also presupposes that the institutional mechanisms of worship and ritual are fully outside the purview of the internal power in Hinduism. In turn, Hindu tradition, according to Acevedo, can have its own authorizing power outside the control of the state. Such an assumption, not to say erroneous, only sounds like wishful thinking.

It has been firmly argued that the state interferes with religious affairs and thus contributes to the maintenance of the secular ethos, which in turn defines the nature of secular power in the respective context (Agrama 2012: 187). I do not ignore the fact that Acevedo does not fully subscribe to Hussain Agrama in interpreting Indian secularism as exercising its power in regulating religion (Acevedo 2013: 102). Acevedo argues that the state's determination of religion, which is hardly unique to any single context, cannot always result in the "unqualified expansion" of its sovereignty (ibid.: 101). This is because, Acevedo thinks, contrary to Agrama, that the indeterminacies that are part of secular governance are in fact productive, especially for personal liberty (ibid.: 102). In other words, the determining power of the state over religion does not constitute its absolute sovereignty, but it leaves room for ambiguities that are productive for the self-sustaining authority of the respective religious tradition, as per Acevedo. But the conceptual production of what a religion is in its lived realities cannot, at least in the context of Hinduism, be

captured as antithetical to the power of the state. Stretching the post-colonial argument about Hinduism as independent of the authority of the state (in interpretation as well administration) to the colonial period, Acevedo thus argues that the colonial Travancore functioned as a responsible – and responsive – government relative to the religious freedom of its citizens and its approach to temple administration (*devaswoms*) exemplifies the same (Acevedo 2016: 850). This in effect imagines the existence of Hinduism as a religion in which the state occasionally interferes with and it must be done so in a responsible manner. However, in my discussion of J.S. Verma’s verdict in the context of Thackery’s speech, it is clear that the state upholds the authority to define Hinduism, be it as a culture or religion, in a way that surpasses the secular dictums regarding religious interventions in politics (e.g., RPA).

Robert D. Baird reminds us that Indian law maintains an implicit distinction between Hinduism as a religion and Hindu as a legal category. As both are not disentangled from each other, this distinction only concerns the nature of cases that the SC deals with. For example, in the case of The Hindu Succession Act of 1956, it was stated that the act applies to anyone who is “Hindu by religion” and “anyone who is Buddhist, Jain or Sikh by religion” and finally those who are not Muslims, Christians, Parsi, or Jew (Baird 2005: 70). This holds that one can be different from Hindus in terms of religion while coming under the jurisdiction concerning Hindus. In other words, Hinduism as a religion is definable, but only as a category of individual belief,⁶ not as a category of everyday life affected by law. This distinction, fluxional as it sounds, only leaves room for assuming that if we meant materially constituted forms of life by the category of religion, then what Hinduism is what Indian law defines what it is. In other words, a self-claimed authority over defining what Hinduism is fully vested in the juridical authority of the secular state in India.

What this says, contrary to Acevedo, Sen, and the like, is that Hinduism must be understood as part of the evolution of the state. In other words, the genealogy of Hinduism is indispensable to the trajectory of the modern nation-state in India and its authorizing power. In that sense, the grievance that the state interferes, perhaps unfairly, in matters of religion stems from a mistaken attitude about Hinduism. But this raises deeper questions about what was generally understood to be “religion” and its relationship with the state in India, especially in the context of Islam and Christianity. I’m not suggesting that the category of religion, in the context of Islam and Christianity, has a separate historical genealogy outside the state. Because the forms of state and religion were historically formed and therefore constantly shifting. But this constant shifting has to be “authorized” within a particular discourse and thus the question of the relationship between the state and religion becomes the question of state and authority. In the case of Islam and Christianity, such a question of the relationship between the state and the authority

is worth asking because it is essentially a question of regulation and a specific kind of historical evolution caused by such regulations. Thus, who and how authorizes the shifting acts and attitudes as Islamic and Christian under the sovereignty of the state is a question that can be rightly posed to those respective traditions. But who authorizes the shifting acts and attitudes as Hindu is a question that primarily concerns the authority of the state. In brief, the construction of Hinduism (culture or religion) is fundamentally part of the enunciative power of the state in India.

Sovereign Uses of Culture

As we have now drawn a complex picture of how Hinduism was not to be understood as a religion ontologically separated from the state, the question of how the state produces Hinduism becomes ever more pressing. It is in this context that Verma's verdict becomes a more pertinent site of this inquiry. The verdict states that,

It cannot be doubted, particularly in view of the Constitution Bench decisions of this Court that the words 'Hinduism' or 'Hindutva' are not necessarily to be understood and construed narrowly, confined only to the strict Hindu religious 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. (*Prabhoo vs Kunte* 1996: 24)

The Judicial Bench here appears to be insistent on a conceptual separation between religion and culture or way of life since the idea of religion immediately hits the familiar terrain of narrow fundamentalism for the Bench. The Bench also holds that the idea of religion, employed here to capture Hinduism, can well be "unrelated to the culture and ethos of the people of India." Analyzing the verdict, Veit Bader suggests that the SC has certain preoccupations about the nature of speech in election campaigns which appeared to be blind in their approaches to religion. Focused on the angle of free speech in regard to this case, Bader suggests that the attempt to always find the violation of free speech in religion is counterproductive (Bader 2015: 129) given that secular ideologies are also capable of such violations. However, Bader's analysis is on the very act (RPA), not the peculiarity of this particular case, even though his observations were predicated on this case. What Bader missed is the way in which the judicial sovereignty in India constructs what is deemed religious and what is cultural for adjudicating cases concerning RPA. This power, which Asad calls the secular power, is found to have escaped his attention.

A.G. Noorani's problem with this verdict is the conflation between culture and nationalism that it makes, potentially excluding minorities whose culture can be construed as deviant to the recognized culture and thus made excluded from the nationalism's body politic (Noorani 2006: 83). Nonetheless, Noorani does not seem to have any doubt about the natural connection between Hinduism and culture, except that the BJP does not conform to a way of life, according to him (ibid.: 80). Noorani, contrary to the SC statement, seeks to strengthen the polemic distinction between Hinduism and Hindutva with the former as an ancient religion and the latter as a political ideology. Badrinath Rao described the situation this way,

the amorphous nature of Hinduism, the absence of a set of commonly accepted, unifying tenets, and the lack of a binding, internal mechanism for arbitration and regulation of its practices – all these factors devolve an onerous responsibility on the judiciary. Unfortunately, the courts have neither the competence nor the resources to discharge these obligations. (Rao 2003: 382)

However, Rao's problem with the SC statement concerning this case lies where the court "provided judicial legitimacy to Hindu nationalism" (ibid.: 382), as the SC conflated Hinduism with Hindutva in its statement. As much as I find Rao reasonable in his perception of the ambiguities of Hinduism, I disagree with the assumption that the ambiguities are unproductive to the state or judiciary and the state is incapable of managing them. The assumption of "amorphous nature of Hinduism" was precisely what reinstates the state's authority in authorizing practices, sensibilities, and percepts that are deemed Hindu, and termed cultural sometimes and religious in other times. In other words, it was precisely the conception of the "amorphous nature of Hinduism" that lent credence to the discursive construction of culture in legal discourse concerning Hinduism and thus reinstating the power of the state. All of these authors I cited above with regard to the *Prabhoo vs Kunte* and *Joshi vs Patil* cases conjoin to the point that the problem with the SC statement was its conflation of Hinduism and Hindutva thereby homogenizing the already heterogeneous tradition called Hinduism. The problem with this assumption is not only that it does not see that the Hindu nationalists are actually proud of their heterogeneity everywhere, but also that this assumption crucially misses the discursive premise (culture) upon which this supposed heterogeneity was understood, experienced, and theorized.

According to the detailed statement laid out by the SC in adjudicating the *Prabhoo vs Kunte* case, the idea of religion appeared as a conceptual reduction of a vast repertoire of life that was otherwise called "culture." What lies at the heart of this argument is that the concept (religion) is to represent empirics (culture). It is thus a commonplace move to stress the richness and vastness

of empirics and therefore the narrowness of concepts. Such assumptions entail the old structuralist linguistic logic of language as representing reality. This has almost become like a template for the critique of Eurocentrism, in which, it was argued that theories are imported from the West to the East to capture the life worlds that are otherwise impossible to capture. Verma's take on Hinduism in fact bears a certain semblance to the assumptions entailed in this line of argument which celebrates heterogeneity as a form of empiric irreducible to concepts. But most importantly, such an argument is also suggestive of the supposed empirics as uncritical and it defies any discursive attempt at articulating it. In other words, the empirics, in their relationship with language, are deemed unavailable to concepts. Such criticism of concept makes it difficult to think of empirics in discourse because what is thought to be empirical or to be uncaptured by concepts is in fact not outside of any discourse. Therefore, a claim of the vastness of empirics as against the reduction of concepts, in our case "way of life" as against "religion," is too misleading and it would not allow us to explore the discourse within which any utterance about this empiric makes sense.⁷ In short, the idea that culture is ancient, heterogenous and territorial whereas religion is about belief, narrowness, and sects is part of a discourse that authorizes 1) the power of the state as an authority in Hinduism, and 2) the secular status of the state that is concerned about all religious communities at the same time.

The question, therefore relevant here, is what is the discursive genealogy of such utterances, in this case, that of culture or way of life, that 1) construct the empirics as against concepts, and 2) translate them as culture as against religion, giving rise to several sub-thematic categorizations such as heterogeneity vs homogeneity, inclusive vs exclusive, syncretic vs narrowness, etc. In addition, it's equally important to ask, in favor of what these separations were made in the first place. The idea of culture, used in order to oppose the reductionism of the concept of religion and showcase the vastness of empirics, itself is a concept and thus has a genealogy.⁸ This genealogy of culture, the initial production of which is closely associated with the management of the realms of capital in nineteenth-century colonial India, is fully overlooked in its enunciation as "irreducible" by the concept of religion that quickly translates itself into narrow fundamentalism for the Supreme Court. In other words, the idea of culture is a recent modern conception with specific historical assignments.

In addition, the SC's phrasing of Hinduism as "the way of life of the Indian people" presupposes "Indian people" and their way of life as pristinely constituted outside the history of citizenship in India. This can perhaps be found to be threatening to the very existence of the judicial institution in India which declared Indians to be ancient, since these institutions' official history does not last even half a century.

These questions have not appeared urgent to legal scholarship in India yet, since most of the commentaries on this particular verdict are concentrated on the equation that the SC made between Hindutva and Hinduism. However, the idea of culture, which is supposed to have no genealogy and therefore is a universal designation for those who were born in India, in fact, explains nothing but only the authority of the state to authorize who Hindus are and who are not. In other words, the category of culture legitimizes the state as the authority in the production of discourse that we call Hinduism. Most importantly, the category of culture also serves the secular sovereignty of the state whereby the state can escape from the charge of a “religious” authority. The state could thus be at the same time an authorizing agent in matters of Hinduism and a secular legislative power over a multi-religious population. In so serving to fulfill these dual duties, the notion of culture becomes constitutive of the sovereign prerogative of the state in India. This on the other hand evinces that the scholarship that is concerned about the regulation of the state in the matters of religion erroneously presupposes an authoritative tradition for Hinduism as a religion outside the confines of the state.

Conclusion

Several works on Hinduism as a religion in academic scholarship, both affirmative and negative, operate upon an *a priori* definition of religion in order to qualify the arguments. Be it W.C. Smith (1962)⁹ or Robert Frykenberg (1993), who rejected the idea that Hinduism is a religion, or Doniger (1992), Trautmann (1997), Monier-Williams (1883), or Lorenzen (1999), who insisted that Hinduism is a religion with its own characteristics, they evidently ignore the historical construction of the category of religion in South Asia. The debates on secularism in India are equally premised upon the assumption that religion and secularism are concepts that are given, not historically constructed and genealogically made available through their uses. The reclamation of Hinduism as a culture and a way of life, not necessarily articulated within a given concept (such as religion), on the other hand equally ends up posing conceptual dichotomies (such as religion vs culture) that are not historically established nor practiced within a tradition. Most importantly, none of these positions offer any productive historicization of the relationship between what came to be called religion and the state in India, at least in the context of Hinduism. Several works in pursuit of explaining the relationship between religion and state are stuck around imagining religion and state as separate ontologies and thus discussing Hinduism along the same line. The problem with the arguments in favor of or against the idea that Hinduism is a religion is that those arguments seek empirical unity in order to establish the conceptual legitimacy of the category of religion for Hinduism. Moreover, both such empirical unity and diversity appear as the objects of conceptual labels for scholarly sanctions.

The domain of legal disputes in India is in no way disconnected from the everyday materiality of life. Its productive and disruptive trajectory *vis-a-vis* religion, therefore, constitutes an unignorable archive for investigating the idea of religion, secularism, and Hinduism. It is with this spirit that this inquiry was envisioned in this paper. In addition, the famous Hindutva verdict authored by J.S. Verma made a surprising absence in the scholarly archive of studying the relationship between the state and religion. Many of the studies that seek to make sense of this relationship, especially in the context of Hinduism, are confined to the analysis of disputes around temple and Hindu marriage and succession acts. Verma's verdict, which primarily concerns RPA and thus secularism, was not found to be an important site of analysis in this respect. I find it surprising because, Verma's verdict, in a scrupulous scrutiny, constitutes one of the most important materials in understanding the current conjunction in the relationship between state and religion, not only of the etiquette of electoral campaign. Furthermore, this archive precisely breaks the convention of studying Hinduism in association with certain typologies of cases in the legal scholarship that include, as I mentioned above, family and worship.

Finally, the concept of culture, the genealogy of which is not unknown, must not be taken for granted as a description of a group, practices, and sensibilities. As much as it concerns them, it must also be studied for what it does in the real world and thus affect the form of life constituted within various traditions as well as the sovereign enunciations under which such forms of life are re-constituted. The uses of culture, colonial in origin, now expanded their domain beyond the anthropological, logistical, statistical, and certainly sociological needs and became more emblematic of how sovereignty works in contemporary times. The use of culture by the SC, as it was demonstrated in our archive, shows not how a group of people live; a typical conceptual function of culture as it was understood in the common parlance, but how it reveals the ways in which the sovereign decrees on religion are made and put into operation. In my approach, therefore, the idea of culture was understood as genealogical, in which, its uses and function within a particular temporality constitute its contour *vis-a-vis* its enunciation.

Acknowledgement

I presented a version of this article at the ASPECT conference at Virginia Tech in 2022. I am grateful to the attendees for the discussion of this article. I want to particularly thank Dr. Rachel Scott for her generous engagement with the initial draft of this work and all our generative conversations throughout its development. I also want to thank Dr. Shaun Respass and Afthab Ellath for their helpful comments and suggestions in reworking this draft.

Notes

- 1 In Ayodhya of Uttar Pradesh, the Muslim place of worship called Babri Masjid was demolished by the right wing Hinduva groups based on the claim that the Masjid was built on the remnants of a temple centuries ago, which was never proved archeologically.
- 2 Ananda Abeysekara extensively criticized the scholars who tend to “define” religion, by way of cornering out Thomas Tweed’s *Crossing and Dwelling: A Theory of Religion* (2006). He writes, “... scholars continue to regard religion as an object or *category* of theory, which, by being an *accused* or *acustative* in the Greek sense of the word (Heidegger 1996), will always require explaining, qualifying, or accounting for. Here religion becomes something *external* to life, or better yet, reminiscent of Hegel, an “expression” of life. Despite sophisticated justifications, these scholarly attempts to interpret and theorize religion are made possible by a “decision;” in that to interpret and theorize religion is simply to decide to do so, with all the sovereign logic and force of decision” (Abeysekara 2011, 260; emphasis added). It is clear that here Abeysekara’s debt is primarily to Reinhart Koselleck than to Foucault or Asad. While agreeing with Abeysekara on the scholarly habits of defining religion, a student of Asad or perhaps of Abeysekara himself, cannot help but be skeptical of his usage of “sovereign.” Because the idea of the sovereign(ity) here as revealed through a decision establishes only a singular agency of power that can define and act on an exception. If sovereignty was the suspension of procedures, following Schmitt, to characterize a scholarly attempt to define religion as “sovereign” would only mean that such a definition is not part of a historical trajectory (secularism) that renders religion as an object of conceptual critique and thus a definition, but rather, is part of a singular decision that may (or may not) have to do with an individual’s scholarly whims. It is therefore surprising that Abeysekara does not care to explain the very idea of sovereignty when he lavishly used it to criticize the habits of defining religion as an object, which apparently has a longer genealogy.
- 3 Peter van der Veer writes, “if one accepts Asad’s argument that religion itself is a modern category, one has to realize that it is applied to Christianity as much as it is applied to Hinduism. The difference, however—and that remains crucial—is that Christianity, at least from Kant onward, is portrayed as the rational religion of Western modernity, whereas Hinduism is mystified as Oriental wisdom or irrationality” (Veer 2002: 176, 177). This understanding of Asad remains to be ignorant of the ways in which religion becomes a *genealogical formation*. Of course, the definition of religion, as enabled by a series of conceptual dichotomies encased in secularism, poses different problems to different traditions. But a conception of religion being formed in modernity does not mean that it does not address the differences of traditions, but only that it signifies a discursive power within which religions are rendered objects of truth claims, rather than embodied traditions. It is neither a problem of categorical misplacement, as van der Veer seems to have mistakenly understood, but rather, discourse and power operate in informing what we think as “religious.” In other words, van der Veer crucially misses the point of discourse and power, and resorts to taking the category of religion as a signifier and thus analyzing the problem as the problem of the accuracy of signification.
- 4 Rajeev Bhargava famously criticized the scholars who believed that secularism is incompatible with the Indian notion of tolerance due to secularism’s Western colonial heritage. Bhargava argues that the concept of secularism transmutes in India, encountering a distinct experience of a multi-religious environment that was already available there unlike in the West where Christianity’s sectarian formations determined secularism’s fundamental conceptual configuration. Bhargava’s sensitivity to the temporal mutation of concepts is much

appreciated and there is no reason to disagree with him on how concepts are used differently in different forms of life. However, what Bhargava crucially misses is the point of power, which a concept carries with it as well as exerts on life. In other words, Bhargava's notion of "Indian secularism," however different it may be depending on the historical experience India offers, falls short of attending to the discursive power that a concept holds as it sustains in different conditions. This apparently takes us to the crucial problem of translation embedded, yet often escaped, in the discussion on secularism in India. Doesn't "Indian secularism," which Bhargava enthusiastically proposes, mark the condition of translation, if Indian and secularism were two words? If it thus pertained to the question of translation, how does Bhargava account for the notion of power embedded in it? Bhargava might benefit much if he read Talal Asad carefully, especially his latest book titled *Secular Translations* in which Asad particularly highlights that an inquiry into translation is not only about what the "subjects do *with* the language but also what language *does* with subjects" (Asad 2018: 1). My observations on Bhargava (2006: 20–53) are based on his essay titled "The Distinctiveness of Indian Secularism".

- 5 For a more expansive version of this argument elsewhere, see Sen (2019).
- 6 One may want to ask who are these individuals and how they identify as Hindus?
- 7 For a detailed discussion of the relationship between concepts, time and genealogy see Abeyssekara (2019).
- 8 For instance, Ritu Birla argues in her *Stages of Capital*, that the emergence of the concept of culture in the colonial India has to do with the management of the newly emerged divide between public and private: a divide that sought to manage the symbolic realm of capital flow (such as gift-giving) and material realm of the same (Birla 2009: 21).
- 9 In reviewing Smith's canonical *The Meaning and End of Religion*, Talal Asad writes, "Smith's concern is that Hinduism should be defined nominally not essentially. Hinduism is simply what Hindus believe and do. But my concern is that it is also, paradoxically, a heterogeneity that is celebrated as a singular 'vision' attributed to a collective subject: Hindus, on the other hand, have gloried in diversity. One of their basic and persistent affirmations has been that there are many aspects of truth as there are persons to perceive it. Or, if some proclaimed a dogmatic exclusivism, insisting on their own version of the truth over against alternatives, it was always a sectarian basis, one fraction of *the total Hindu complex* affirmed against other fractions – not one transcending Hindu schema as a whole. The difficulty with this can be stated in the question: what defines 'the total Hindu complex' other than an umbrella extending arbitrarily over a miscellaneous collection of discourses and practices? But given that that is so: who extends the umbrella, in what situation, and for what purpose? The game of defining religion in this context is a highly political one" (Asad 2001: 209–210).

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