

## **RELIGIOUS LIBERTY AND DEMOCRATIC CITIZENSHIP**

Dr Rajesh C. Shukla

Associate Professor & Director School of Public Ethics  
Faculty of Philosophy & Human Sciences  
Saint Paul University, Ottawa, Canada  
rshukla@ustpaul.ca

### **Resumé**

La liberté religieuse réside au cœur même de la citoyenneté démocratique. Un Etat démocratique est philosophiquement engagé à défendre la liberté de religion et de conscience, et non à discriminer ses citoyens pour des motifs religieux et culturels. Cependant, cet engagement a fait l'objet d'énormes pressions ces dernières années. D'une part, on assiste à une augmentation de la politique ethno-culturelle ciblant les pratiques religieuses et culturelles des minorités. D'autre part, on constate aussi un durcissement de lois religieuses et de pratiques controversées parmi les minorités, contestant les dispositions fondamentales de la justice sociale et politique dans les Etats démocratiques. Je soutiens dans cet article 1) qu'un Etat démocratique doit protéger la liberté religieuse de tous les citoyens quelles que soient les circonstances 2) et qu'il doit aspirer en même temps à réaliser les dispositions de la justice, en particulier envers les femmes et les enfants. Je m'appuie sur le fonctionnement de l'Etat indien pour soutenir mes conclusions.

### **Mots-clés**

Liberté religieuse, citoyenneté démocratique, laïcité, droits des femmes

### **Abstract**

Religious liberty resides at the very core of democratic citizenship. A democratic state is philosophically committed to defending the freedom of religion and conscience, and not discriminating its citizens on religious and cultural grounds. However, this commitment has come under tremendous pressure in recent year. On the one hand, we witness a rise in the ethno-cultural politics, targeting the religious and cultural practices of minorities. On the other hand, we also notice a hardening of controversial religious laws and practices among the minorities, challenging the fundamental provisions of social and political justice in democratic states. I argue in this paper 1) that a democratic state must protect the religious liberty of all citizens under all circumstances 2) and that it must aspire at the same time to realize the provisions of justice, particularly towards women and children. I draw upon the functioning of Indian state to support my conclusions.

### **Keywords**

Religious liberty, democratic citizenship, secularism, women rights, and ethno-cultural revivalism.

## INTRODUCTION

In recent years we have noticed a growing assault on religious liberties in different parts of the world<sup>1</sup>. I will say more about the causes of this intolerance in a moment but for now let me note its three main implications for democratic citizenship. First, there has been a surge in nationalism and chauvinism in some countries, targeting the religious and cultural practices of minorities in particular<sup>2</sup>. Many individuals and groups are drawn towards the idea of a homogeneous society and find the religious and cultural differences somewhat problematic and unacceptable. A chauvinistic belief in one's culture and value can stir passions and undermine public support for religious freedoms. Second, current attacks on religious liberties have also occurred in some countries in the areas of electoral politics, law and policy. In the past, such attacks have been common to theocratic and autocratic states but now they have started appealing to democracies<sup>3</sup> as well. This is a concerning development<sup>4</sup>. Democratic states are philosophically committed to protecting the freedom of religion of all citizens so they must not infringe on such freedoms, if they want to remain true to their core principles. Finally, it is impossible to not be appalled by the total savagery that has been inflicted in the name of religion by some non-state actors and militant groups, vitiating the value of religious freedoms in many parts the world<sup>5</sup>. Of these three implications, the first can be regarded as most prevalent, the second most controversial, and the third most gruesome and deplorable. Needless to say, all of them are extremely problematic and unworthy of a democratic society.

My purpose in this paper is to examine the challenges facing religious liberties in democratic states. I shall argue simultaneously that 1) religious liberties reside at the heart of democratic citizenship and that a democratic country must do everything to protect them, and also that 2) a rigid and convenient formulation of religious liberties should not be used as a clog against social and political progress, individual rights, and the rights of women and children in particular. The paper is divided in five sections, including introduction. In the second section, I argue that religious freedom has lately encountered growing threats from ethno-cultural and

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1 Tom Heneghan's column "Religious Violence Across World Hits Six Year High According to Few Study". (January 23, 2014). *Huffington Post*: [http://www.huffingtonpost.com/2014/01/14/religious-violence-pew-survey\\_n\\_4596169.html](http://www.huffingtonpost.com/2014/01/14/religious-violence-pew-survey_n_4596169.html)

2 Andrea Noble's report "Obama mosque visit comes as Muslim fear of violent backlash increases". (February 16, 2016). *Washington Times*: <http://www.washingtontimes.com/news/2016/feb/2/obama-mosque-visit-comes-as-muslim-fear-of-violent/?page=all>

3 Dr. Ben Carson, while seeking the nomination for President in the Republican Party Primary, caused a serious uproar among many by stating his opposition to the idea of a Muslim President in the USA. His views seem to be in a direct conflict with the article VI of the US constitution, which maintains that "no religious test shall ever be required as a qualification to any office or public trust in the United States". See Sarah Kaplan's report "Despite Backlash Ben Carson is not backing down from his opposition to a Muslim president". (September 21, 2015). *Washington Post*, Online Edition: <http://www.washingtonpost.com/news/morning-mix/wp/2015/09/21/despite-backlash-ben-carson-is-not-backing-down-from-his-opposition-to-a-muslim-president/>

Dr. Carson's rival in the Republican Primary, Mr. Donald Trump, went even further in his anti-Muslim rhetoric, calling for a complete shut down of Muslims entering in the United States: <http://www.wsj.com/articles/donald-trump-calls-for-ban-on-muslim-entry-into-u-s-1449526104>

4 In a CNN interview with Anderson Cooper on March 8, 2016, the Republican Presidential candidate Mr. Donald Trump remarked that "Islam hates us" and refused to draw a distinction between political and radical Islam and Islam as a religion: <http://www.cnn.com/2016/03/09/politics/donald-trump-islam-hates-us/>

5 Matthew Fisher's report "ISIL militants not Muslims: Millions fleeing their homes as terrorist groups takeover Iraqi town" (May 24, 2015). *National Post*, Online Edition: <http://news.nationalpost.com/news/world/israel-middle-east/isil-militants-not-muslims-millions-fleeing-their-homes-as-terrorist-group-takes-over-iraqi-towns>

nationalistic groups. Even though what constitutes a culture is difficult to define and remains contentious as an historical idea, it has been used by ideologues and demagogues in the sense of a homogenous social life rooted in one's native land. When a religious practice does not conform to this homogenized conception of life, it is ostracized for that very reason. In the third section, I expound on the idea of religious freedom and tolerance in democratic societies and work out their implications for a secular state. As a political doctrine, secularism stands for equal distance from all religions in the matters of law and policy, but does not adequately recognize, at least sometimes, the religious aspirations of many citizens (Calhoun 2011, 77). In the fourth section, I discuss some practical formulations of religious freedoms that have been challenged on the grounds of individual rights and justice, focusing particularly on the rights of women with regard to marriage and divorce in India. Finally, I state my conclusions in the fifth section.

## **CULTURAL REVIVALISM AND THREATS TO RELIGIOUS FREEDOM**

Prior to proceeding with our discussion, it may be useful to recognize that not all instances of cultural revivalism pose a threat to religious freedom. On the contrary, some of them can have a positive bearing on religious liberties, enhancing their value and presence in the social and political life of citizens. In every society, we find the instances of some such positive cultural energy<sup>6</sup> and in this sense culture is rightly regarded as a significant part of human personality (Parekh 2006, 124). However, there is another aspect of cultural revivalism that has antagonistic implications for religious liberties. In its antagonistic form, cultural revivalism manifests as a spiritual and moral return to a glorious past and seeks to reinforce past values, ideals, and forms of life in present times. This quest for a past glory in present times can be full of nostalgia and impossible expectations, leading to many serious ethno-cultural and religious conflicts (Nussbaum 2007, 181-182).

Central to all forms of antagonistic cultural revival is a longing for homogeneous values and ethos, and a fear that they are under threat and need to be protected. Their protection takes different shape in different societies, depending upon a host of socio-economic and political factors. Irrespective of their differences in manifestation, all such revivals tend to emphasize the emotional and cultural bond of a people and have a chauvinistic appearance and tone<sup>7</sup>. Consider, for instance, the religious and ideological commitment of the Rastriya Swayamsevak Sangh (RSS) in India: "The Hindu culture is the life-breath of Hindusthan. It is therefore clear that if Hindusthan is to be protected, we should first nourish the Hindu culture. If the Hindu culture perishes in Hindusthan itself, and if the Hindu society ceases to exist, it will hardly be appropriate to refer to the mere geographical entity that remains as Hindusthan. Mere geographical lumps do not make a nation. The entire society should be in such a vigilant and

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<sup>6</sup> It has been argued that Vivekanand (1863-1902) in India represented such a positive cultural energy. See Anirban Ganguly's article "Projecting India's Civilizational and Cultural perspective: Need for an Integrated Vision" (February 29, 2012). Vivekanand International Foundation: <http://www.vifindia.org/article/2012/february/29/projecting-india-s-civilisational-and-cultural-perspective-need-for-an-integrated-vision>

<sup>7</sup> Owen Jones's "Donald Trump's real threat is making extreme bigots seem moderate" (December 8, 2015). *The Guardian*: <http://www.theguardian.com/commentisfree/2015/dec/08/donald-trump-bans-muslims-us-comment-bigotry-racism-isis>

organized condition that no one would dare to cast an evil eye on any of our points of honour”<sup>8</sup>. The above statement may be historically relevant in the sense that ancient India was primarily Hindu, but its reinforcement in present times does not adequately reflect the religious and political make up of that country. As per the 2011 Indian census, the estimates are that Hindus constitute about 79.8 percent of 1.2 billion Indian population, followed by Muslims 14.2 percent, Christians 2.3 percent, Sikhs 1.7 percent, and Buddhists and Jains significantly below 1 percent, 0.7 and 0.4 percent respectively<sup>9</sup>. The assertion of a Hindu centric Hindusthan has caused concern among religious minorities in India, particularly among Muslims and Christians<sup>10</sup>.

Another reason driving hostile cultural revival in different parts of the world, including India, is the sense of injustice among many citizens. Injustice may be institutional or imaginary but in both cases it has a motivating effect on the members of a religious and cultural group. On the one hand, many Hindus believe – and rightly so – that the Hindu civilization is historically peaceful and inclusive (and welcoming of religious and political differences) and that it provides enough intellectual space for competing religious traditions to flourish without any negative constraint.<sup>11</sup> But on the other hand, they also contend, that the Hindu civilization has been abused in the past by foreign forces and colonialism and is now (and this may be problematic) being unjustly-treated by aggressive religious minorities in India: “Hindus in India have internalized a historical narrative according to which they are a pure and peaceful civilization that has been conquered again and again: in the Middle Ages by a variety of Muslim invaders, in more recent times by the British. The painful experience of colonial subjugation, together with the racism that accompanied it, left many Hindus in India vulnerable to a simplification of reality and to the refuge offered by romantic/fascist European ideas of blood and purity” (Nussbaum 2007, 6).

Nussbaum teases out the third factor contributing to cultural revivalism in India: Historically, it can be derived from the British colonial policies in India, if not European notions of blood and purity, and takes the form of majority-minority discourse in present context. The Hindu cultural revivalist believe that Muslim minorities have been making unreasonable demands on Indian state, and that many governments in India have been accommodating them either due to misconstructions of Indian social and political reality or more accurately due to the conveniences of electoral politics. Most political parties in India, they contend, have adopted a policy of appeasement towards Muslims and have gone out of the way to gratify their

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8 The mission statement of RSS: <http://www.rss.org/knownus/Encyc/2012/10/23/Vision-and-Mission.aspx>

9 The census data shows that Hindu population has declined 0.7 percent in the past decade whereas Muslim population has gone up 0.8 percent. This upward movement in Muslim population and downward movement in Hindu population has been a cause of concern for many nationalist Hindu leaders and the RSS. See, Alok Tikku’s report “Muslim population grows marginally faster: census 2011 data” (August 26, 2015). *The Hindustan Times*, Online Edition: <http://www.hindustantimes.com/india-news/muslim-population-grows-marginally-faster-census-2011-data-show/article1-1384095.aspx>

10 Arielle Dreher’s report on “India’s Christians concerned about growing attacks on religious minorities”. (May 27, 2015). *Washington Post*, Online Edition: [https://www.washingtonpost.com/national/religion/indias-christians-concerned-about-growing-attacks-on-religious-minorities/2015/05/27/708c54c0-04a3-11e5-93f4-f24d4af7f97d\\_story.html](https://www.washingtonpost.com/national/religion/indias-christians-concerned-about-growing-attacks-on-religious-minorities/2015/05/27/708c54c0-04a3-11e5-93f4-f24d4af7f97d_story.html)

11 “The Indian religions are not exclusive minded. They are ready to allow that there may be alternative approaches to the mystery. I feel sure that in this they are right, and that this catholic minded Indian religious spirit is the way of salvation for all religions in an age in which we have to learn to live as a single family if we are not to destroy ourselves” (Arnold Toynbee cited in Radhakrishnan, pp. 33-34).

demands<sup>12</sup>. It is true that religion and caste play an important role in Indian politics but the above contention seems somewhat conflated<sup>13</sup>. It cuts majority and minority into two monolithic groups, as if they are meant to compete and clash at all times, and fails to appreciate their historical co-operation despite their religious differences. Moreover, it completely overlooks the centuries of Indian history, which is marked by a peaceful co-existence of Hindus and Muslims. As a result of this oversight and conflated sense of injustice both majority and minority, Hindus and Muslims in this case, have started acquiring, in some cases, radicalized postures in their political discourse, demanding exactly from the other what the other cannot offer. For instance, the Hindus revivalists would want Muslims to vacate three main Hindu religious shrines currently under Muslim tutelage (Ayodhya, Kashi and Mathura) whereas Muslim religious leaders reject this demand, disputing its historical accounts. Rajeev Bhargava writes, “it is a feature of this [majority-minority] syndrome that groups make demands on one another that can rarely be fulfilled; conjure up imaginary grievances; insist precisely on that which hurts the other most; at one time obsessively desire the very same thing that the other wants; at another time the exact opposite, always with the sole purpose of negating the claims of the other” (Bhargava 2011, 178).

The above three reasons, and the thinking associated with them, do not have a positive effect on religious freedoms and activities of majority as well as minorities in India. Leaders in the majority community fear that minorities are denouncing the historical and cultural heritage of the country, whereas minorities complain that they are denied a rightful place in the social and political process of the country and that their religious and cultural beliefs remains under a constant scanner of the majority. We find the extreme manifestations of such fears in the Hindu-Muslim riots in India. Muslims worry that the Hindu revivalists are pressurizing them to leave three religious shrines in Ayodhya, Kashi and Mathura, and demanding modernization of Islam by making room for un-Islamic legal and social practices, whereas Hindu revivalists stipulate that Muslims are unjustly occupying many Hindu places of worship, and defending outdated Islamic customs and practices, compromising the rights of women and children in particular. Mutual antagonism and distrust turn a bad situation into worse. The very perception that majority wants to alter the religious and cultural practices of minorities’ results in the hardening of those practices, provoking demagogues on both sides. Moreover, this demagoguery strengthens the negative perception of Hindu and Muslim groups towards one another, each group thinking that the other is virulent in its unreasonable demands and has become a stumbling block in the social and political progress of the country. It is a natural corollary of such demagoguery to hark back on the past glory and search for a future that could reflect it. But this cannot be done unless people are mobilized on ethno-cultural, religious, and nationalist grounds: “There is no need to fear. We are in our own country. We are not intruders or infiltrators. This is our own country, our Hindu ‘rashtra’ (nation). A Hindu will not leave his land. What we have lost in the past, we will try to bring it back. No one should be afraid of Hindu rising. Those who are raising their voice against the rise of Hindus are selfish and have

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12 Inder Malhotra’s column “Rear view: the era of the politics of appeasement: Rajiv Gandhi’s attempt to please conservative Muslims and Hindus cost him the support of both”. (December 8, 2014). *Indian Express*, Online Edition: <http://indianexpress.com/article/opinion/columns/rear-view-the-era-of-the-politics-of-appeasement/>

13 Commenting on the decline in the Hindu population in 2011 census, Praveen Tagadia remarked: “Hindus must act immediately so that India remains a Hindu majority nation. Or they should get ready for ethnic cleansing like it was done in Kashmir and Afghanistan” (August 29, 2015). *Indian Express*, Online Edition: <http://indianexpress.com/article/india/india-others/rising-muslim-population-a-worry-says-praveen-togadia/>

vested interests. And if they oppose, there will be confrontation”<sup>14</sup>. Mohan Bhagvat’s remarks may capture the growing worry of Hindu revivalists but are not helpful in fostering Hindu-Muslim co-operation.

## **RELIGIOUS FREEDOM, SECULARISM AND POLITICAL RIGHTS**

In the previous section, I have argued that an unrestrained belief in the sacredness of one’s cultural has become a motivating force behind cultural resurgences all over the world, including India. Politically such a belief implies that in public life one must show an unflinching respect for the principles and practices that are espoused by a dominant religious ideology. Philosophically, it reinforces the aspiration that institutions of state must be infused with cultural commitments and that they must work to advance such commitments in public life. In essence both these beliefs symbolize a comprehensive view of life and undermine the foundations of religious freedom in a democratic society. One way to combat them, I believe, is to strengthen the political philosophy of secularism and institute strong political safeguards against religious and cultural biases. Secularism as a form of governance does not allow institutional manifestations of ethno-cultural nationalism, and serves as a bulwark against the mixing of religion and politics: “Broadly speaking, secularism, anywhere in the world, means a separation of organized religion from organized political power, inspired by a specific set of values” (Bhargava 2011, 64). In other words, a secular state cannot allow a religious or cultural group, majority or minority, to use the institutions of state and government to promote its hegemonic agenda that forces others into compliance. And to the extent cultural revivalists try to enforce their exclusionary vision in public sphere, they must be discouraged in a secular state. A failure to overcome this challenge would diminish the value of secularism, leading to the loss of confidence in secularism itself.

Even though secularism has no ideal type and its nature and practice differ from country to country and place-to-place, it would be fair to say that a secular state is marked with at least two defining characteristics (Maclure & Taylor 2011, 20 & 27-28). First, secularism implies a political separation of religious and civil authority such that neither of them can use one another instrumentally and that both of them remain free in their respective spheres. The mixture of these two authorities and their corresponding spheres of influence has caused much strife and violence throughout human history; and secularism, Western secularism in particular, is rightly regarded as a response to them. A legitimate functioning of secular states requires them to remain neutral towards different religions and cultures (to the extent cultural practices are religiously inspired), without interfering in their activities or prodding them against one another. Understood this way, secularism must not only secure the separation of religious and civil power but also their independent place such that neither of them undermines one another in public life: “The fusion between political power and a religious or secular conception of the world makes those who do not espouse the state’s official doctrine into second-class citizens” (Maclure & Taylor 2011, 20). This is an important point, requiring further clarifications.

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<sup>14</sup> RSS chief Mohan Bhagat cited in news report “India is our Hindu Rashtra: RSS chief”. (December 21, 2014). *The Times of India*, Online Edition: <http://timesofindia.indiatimes.com/india/India-is-our-Hindu-rashtra-RSS-chief/articleshow/45590219.cms>

Maclure and Taylor are right in saying that the fusion of religious and political power has a long historical tradition and has been the source of many conflicts. Whenever political power is merged with religious, it results in the suppression and persecution of people who do not subscribe to the official religious doctrines and dogmas. Such persecutions occur not only in the case of interreligious conflicts but also in the case intra-religious disputes as well. In Europe we find the instances of such conflicts among different sects of Christianity; and similarly in the Asia and Africa we have witnessed an intense struggle among different sects of Islam. The Shia and Sunni conflicts in the Middle East may have reached dangerous levels due to complex geopolitical factors but their religious and metaphysical differences should not be underestimated either (CBC news report, Online Edition, June 17, 2014). In South Asia too we observe similar interreligious as well as intra-religious tension. The RSS and the Vishwa Hindu Parishad (VHP) in India have been making a strong push for the unification of religious and political power such that political power can be used for transforming India into a Hindu nation, along the lines of somewhat similar philosophical justifications that led to the partition of India in 1947 (Guha 2007, 624-631). The difference is that in 1947 Muslims, led by their separatist leaders, felt that they would be overrun by a Hindu majority in an independent India and needed their homeland in Pakistan to escape the Hindu threat and persecution, whereas the RSS and VHP fear now that Hindus are being overrun by Muslim extremism in India and need to stand up for their rights in their homeland. This mentality of fear results in enormous social regression and loss whenever political and religious powers are fused together and should be avoided.

Another aspect of Maclure and Taylor's above remark pertains to the problems arising out merger of secular and political. Many do not realize that the union of secular and political too can have deeply disturbing consequences for religious liberties. This happens when a state adopts secularism, not only as a political tool for the equal protection of religious liberties of all citizens, but also as a social dogma that public life must be as much as possible secular, not allowing the manifestations religious symbols and practices at public places. Religious liberties necessitate that an individual be free to live her life according to her faith without suffering any imposition from any quarter, but the merger of secular and political compromises this aim. That is why it is important to keep secularism on a political level, and not turn it into a social policy directed at stamping out religion from public sphere. Maclure and Taylor elucidate the issue thus: "Whereas political secularization finds its expression in positive law and public policies, social secularization is a sociological phenomenon embodied in people's conception of the world and modes of life...the state must seek to become politically secular but without promoting social secularization" (Maclure & Taylor 2011, 16).

Next, secularism also requires an unwavering support for the political and moral equality of citizens, protection of their individualities and freedom of conscience. This political and moral equality of citizens, along with their freedom of conscience, constitute the core principles of liberal democratic citizenship in the modern era. On this view of citizenship, every individual possess a moral capacity to choose the ends and goals that she wants to pursue in her life and a liberal state or government must respect this capacity and the choices that spring from its exercise. It is acknowledged that public education and discourse may contribute to enhancing the above capacity but an individual's conscience must be protected: "Rather than dictate to individuals a conception of the good, the secular state respects their freedom of conscience or moral autonomy, that is, their right to conduct their lives in light of their own choices of conscience. It will also seek to defend that freedom of conscience when it is illegitimately

impinged upon, just as it defends equality between women and men or freedom of expression” (Maclure & Taylor 2011, 20).

Cultural revivalists tend to undermine the abovementioned attributes of secularism, and for that very reason alone, a secular state may be suspicious of their intentions. The adoption of culture as a moral and political orbiter of a society implies that what is valuable and worthy as a personal choice or project is publically given in traditions, and that an individual does not need to explore them on her own, let alone *de nova*. In other words, the future vistas of her moral and political life must be articulated within available cultural contexts, respecting their limitations as well. This approach of cultural ascendancy in an individual’s life minimizes her freedom of choice and makes her vulnerable to unnecessary social obfuscation, assessment, and criticism. As an outcome, the view of majority prevails in the social realm; and majority can be tyrannical in its evaluations: “Society can and does execute its own mandates; and if it is issuing wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kind of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself” (Mill 2002, 4). Mill is saying that the state must protect the individual, her freedom of expression and conscience in public sphere; otherwise majority will stifle them.

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A simple look at the instances of cultural revivalism all over the world shows that John Stuart Mill is right in saying that a society, acting through its majority, issues mandates that have harmful implications for an individual’s life and liberty. The majority wants to defend traditional and orthodox views on various issues, and when an individual goes against the established ways of thinking and questions their utility, she is ostracized and punished for her opinion. But such censorships stunt human freedom and progress: When a society does not allow a free and open exchange of ideas, the loss of human freedom is obvious; however, what is not so obvious, but equally true, is that an oppressive society denies itself the opportunities for self reflection and criticism, forgetting that if a criticism is correct, the society will have an opportunity for self-correction, and if it is not correct, even then such criticisms can lead to a moment of collective soul searching and refinement of settled opinions (Mill 2002, 14). So, for Mill, human reasoning and aptitude, not religious and cultural convictions of majority, must determine the modes of social deliberation and exchange. However, the current state of affairs in many democratic countries put a question mark on Mill’s ideal.

All over the world the rise of sectarian politics is leading to the polarization of citizens on religious and cultural grounds. In India, the RSS and Jamaat-e-Islami Hind represent a similar global phenomenon. These organizations look at the same set of historical events but construct two radically different cultural narratives, accusing one another of ill intentions and fuelling religious and political tension in the country. The RSS espouses an ideology of Hindu nationalism and the Jamaat-e-Islam wants Muslims to become more conscious of their differences with non-Muslims i.e. the Hindus and other non-Muslim religious groups, emphasizing among other things “not go to un-Islamic law-courts for settlement of matters except under compelling necessity” (The Constitution of Jamaat-e-Islami, article 9;



<http://jamaateislamihind.org/eng/about-jamaat/constitution/>). Common to both organizations and their sympathizers is the supposition that their religion and culture is under threat from the opposite quarter, giving birth to the politics of suspicion on both sides.

An implication of Jamaat's view that Muslims should avoid going to civil courts in India except "under compelling necessity" is the religious doctrine that Sharia, not civil courts, ought to be the legal and moral arbiter of a Muslim's life. This advice may be religiously inspired but has become a focal point of criticism in recent years; and many critics have used it to highlight the anomalies of Muslim personal law in the context of democratic citizenship in India. The Islamic laws on marriage and divorce have been traditionally, like other religions too, in favor of men and accord very little rights to women. This one-sidedness of Muslim personal law has negative implications for women; and many people agree that something should be done to accommodate the rights and concerns of women. The Hindu hardliners, however, have used this issue to underscore the orthodox stand of Muslim leadership in Indian public sphere, questioning the religious-legal rationale behind discriminatory laws against Muslim women. In this context, one is easily reminded of the Shah Bano case (1986).

In 1978 Mohamed Ahmed Khan divorced his wife Shah Bano and refused to pay her alimony. Shah Bano challenged her husband's decision to not pay her alimony, won in the lower courts, and later on the Supreme Court of India gave a decisive verdict in her favor. Granting alimony rights to Shah Bano, the Supreme Court called on Indian leaders to legislate in favor of a uniform civil code throughout the country, granting equal rights and protection to all women in India. The Supreme Court's ruling led to an uproar among orthodox Muslims in India who thought that the courts were meddling in religious matters of minorities and that as per Islamic law women were not entitled to any financial support beyond the period of Iddat (3 months after divorce). Under the political pressure from Muslim leadership, the Indian Prime Minister Rajiv Gandhi got Supreme Court's verdict nullified through an Act of Parliament i.e. the Muslim Women Protection of Rights on Divorce Act 1986<sup>15</sup>. In the opinion of many, the 1986 Act was a setback to women rights in India and beyond, indicating that the religious orthodoxy can prevail over political process and coax politicians to accommodate its demands even if they go against the civil rights of women.

Cutting across religious and cultural affiliations, many progressives in India criticized the 1986 Act<sup>16</sup>, calling it a total catapulting of government in the face of Muslim orthodoxy, but that is beside the point. Without going into the details, it can be said that the 1986 Act clearly overruled the Supreme Court's verdict and specified as per Islamic tradition in India very modest rights for the divorced women. In accordance with the Islamic law and custom, the 1986 Act recognized compensation rights of women for a short period, during the time of Iddat, but refused to offer financial support beyond that. This lack of financial compensation and alimony at the end of marriage, according to progressives, neither does justice to women's rights

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15 For the details of the 1986 Act, see: <http://indiankanoon.org/doc/1933289/>

16 Arif Mohamed Khan, the Minister of State in the Ministry of Home Government of India, recalls his conversation with the Prime Minister Rajeev Gandhi thus: "Gandhi asked me what I thought of the judgment. I said I found nothing wrong with it. In fact, the Quran says any amount spent on the destitute is a "beautiful loan to God". I said it was blasphemy for anyone to object to money being given to a destitute" (<http://scroll.in/article/730642/arif-mohammad-khan-on-shah-bano-case-najma-heptullah-was-key-influence-on-rajiv-gandhi>).

movements in India nor advances their cause elsewhere<sup>17</sup>. On the contrary, it may be said that it sets the clock back and hurts the financial wellbeing of women. In the first place, it failed to recognize the household contributions of women during the time of marriage and left them without sufficient financial support after divorce. This is particularly odd if the ex-husband has the financial resources available and can support his ex-wife but is unwilling to do so due to disaffection or greed<sup>18</sup>. The 1986 Act appears to have made such unwillingness permissible under the rubric of religious freedom.

In the second place, the 1986 Act was in tension with article 44 of the constitution of India, which says that “the state shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”. Only a uniform civil code can accord equal civil rights to all citizens and to the extent India does not have such a code, Muslim women in India cannot be said to have the same equal rights as a Hindu or Christian women. The defense of a law, it is said, that leaves divorced women without financial rights and support is not merely a religious issue: It is also a social and political issue, and a matter of justice as well. Can a liberal democratic state legislate religious principles into a law to the detriment of some women? This is a politically contentious question. Indian state is committed to according maximum religious liberty to all citizens; moreover, all such liberties are outlined and protected under the fundamental rights in the constitution of India. But sometimes these commitments clash with other articles of the constitution that aspire to guarantee equal civil rights to all citizens. Hence the constitutional conundrum: on a strict and theoretical interpretation of religious liberties, one may justify the 1986 Act, but on the grounds of equality and justice the same Act seems to fall short in the eyes of many.

The RSS and its allies have used the above gap in the Indian constitution to criticize Rajiv Gandhi led Congress Government, accusing it of total surrender in the face of Muslim orthodoxy, and have turned this issue into a political problem<sup>19</sup>. Acknowledging that the constitution of India provides a robust defense of religious liberties and religious institutions, they contend that the constitution also demands that the state shall enact a uniform civil code in India. It is argued that the judgment of the Supreme Court in the Shab Bano case went neither

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17 Arif Mohamed Khan recalls discussing the Shah Bano case with two eminent Islamic scholars Prof. Mushirul Haq and Prof. Tahir Mahmood. Both of them thought that the Supreme Court’s ruling was in the spirit of Islam. Khan remarks: “After discussing the issue with them for hours, I posed my last question to them: If the law of the land places on the Muslim man the obligation to pay the woman with whom he has lived for many years, but whom he has divorced – and she is no position to support herself – then would this law be in violation of Islam? Mind you, the amount the husband is to pay is small – for Section 125 has determined that the amount can’t be more than Rs 500.

Since Prof Haq had a madrasa background, I was very pleased when he said, “I would say it is exactly in accordance with the spirit and teaching of the Quran.” Prof. Mahmood went even one step ahead. He said, “This is exactly what the Quran prescribes” (<http://scroll.in/article/730642/arif-mohammad-khan-on-shah-bano-case-najma-heptullah-was-key-influence-on-rajiv-gandhi>).

18 Arif Mohamed Khan remarks: “Bano’s husband had deserted her, and when she moved the court after three years, he divorced her. It was plain mischief, made worse by the fact that her husband was a lawyer – and also well-to-do” (<http://scroll.in/article/730642/arif-mohammad-khan-on-shah-bano-case-najma-heptullah-was-key-influence-on-rajiv-gandhi>).

19 Subhashini Ali remarks: “It was most unfortunate that the BJP, a member of the Sangh Parivar that had opposed the Hindu Code Bill in the name of religion, was able to pose as a champion of women's rights and start a vicious campaign against the minorities, painting them as people who refused to respect the Supreme Court, who therefore had scant respect for the Constitution and who were anti-national” (India Today, Online Edition, December 26, 2005: <http://indiatoday.intoday.in/story/shah-bano-judgement-was-a-landmark-in-our-social-and-political-history/1/192383.html>)

against the religious freedoms of individuals' nor groups; on the contrary, it strengthened those freedoms by recognizing the rights of Muslim women. In principle all religions, Islam in particular, accord equality to all human beings; and the Supreme Court's judgment in the Shab Bano case appears to have contextualized that principle in India. The real reason for the legislation of 1986 Act, it is claimed, resided in the voting politics of India. Millions of Indian electorates still vote on religious grounds; and the Congress Party was worried that the orthodox Muslims will use their leverage to make an argument against the Congress party if the Supreme Court's verdict was not overturned through an Act of Parliament and if the Islamic civil law was not re-established as the law of the land.

The Shab Bano case and the consequent Act of 1986 bring us to the intersection of religious freedom and democratic citizenship on the one hand, and tolerance and intolerance on the other. One would agree that in a democratic country, all forms of religious freedoms must be protected at all cost; but they should not become a burden on the rights of some citizens, particularly women. Assuming that the orthodox Muslims in India perceived Supreme Court's judgment in the Shah Bano case as act of overreaching by the courts, one may still acknowledge that the judgment strengthened the rights of Muslim women. So by overturning the Supreme Court's judgment, the Act of 1986 does seem to have minimized the rights of Muslim women to some extent. This begs the question on how to balance religious freedoms with the rights of women, and how to show maximum tolerance, in thought and in action, towards a group of citizens that does not support progressive social and political aspirations outlined in the constitution of India. To the above effect, we must always remember that minorities always feel more sensitive and vulnerable, and tend to adopt a strong posture in favor of their religious and cultural practices. This is where majority-minority syndrome works so badly against the minorities. In their effort to keep their (religious and cultural) traditions in tact, sometimes they land up defending the principles that hurt a section of their own population and seem unreasonable to many others. This perception of being unreasonable and unjust slowly percolates in the social sphere so much so that when minorities make a reasonable demand, even that is viewed as an unjustified in the opinion of their critics. It is a duty of every decent society and citizen to fight off this perception otherwise it will become impossible to stop the tragic acts of religious intolerance.

It is one thing to disagree with a position and quite another to be dismissive of its religious logic and the people upholding it. One may disagree with orthodox Muslims in India on their religious stance against a common civil code envisioned in the article 44 of the constitution, without attacking them for their religious thinking. However, the RSS and other Hindu protagonists have taken a strong stand on the above issue, criticizing the policy of appeasement towards Muslims<sup>20</sup>. In a liberal democratic country, including India, if a practice is defended on religious grounds then only its adherents, I believe, can legitimately revise it, after realizing its negative implications for justice and equality of their fellow citizens<sup>21</sup>. It is never easy to alter the principles of social and religious life, and throughout human history such changes have come after much reflection and debate. With time, orthodox Muslims in India too may revise their stance on the Shah Bano case once they come to realize that their position does not advance the

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20 Dipti Singh's report "Rising Muslim population a worry, says Praveen Tagadia". (August 29, 2015). *Indian Express*, Online Edition: <http://indianexpress.com/article/india/india-others/rising-muslim-population-a-worry-says-praveen-togadia/>

21 Opinions differ among the Muslim community in India: Orthodox Muslims have defend the 1986 Act, and criticized the Supreme Court's verdict in the Shah Bano case whereas the progressive Muslims have supported the Supreme Court's judgment and questioned the reasoning behind the Act.

cause of Muslim women and that it provides fodder to their critics who position themselves as the champions of Indian constitution against those who do not respect its democratic values. In the same spirit, one may also hope that the RSS too may come to a conclusion that its posture towards minorities in India is politically divisive and undermines the very democratic fabric that it claims to protect. In this change of heart resides the seeds of a tolerant democratic society; and along with secularism, it can go a long way in protecting the religious freedoms of all citizens.

## CONCLUSION

Protection of religious liberties is one of the most sacred obligations of a democratic state. But this obligation has come under pressure in recent years. On the one hand, there has been a surge in the ethno-cultural nationalism all over the world: We find the instances of this surge in the rise of ethno-cultural politics in various countries, including India, the US and some European countries as well. I have argued that ethno-cultural nationalists believe in a homogenized conception of social and political life, without showing much respect for religious freedom and diversity. This craze for homogeneity undermines the core principles of democratic citizenship and secularism and needs to be rejected. On the other hand, some manifestations of religious liberties have also come under criticism due to their controversial nature and practice. What a religious principle stands for and what its proper entailments are cannot be adjudicated to everyone's satisfaction; only the practitioners of a faith can resolve those questions with confidence. Yet when a religious practice is widely viewed as unfair or unjust and is still defended on religious grounds, it leads to its own problems and predicaments. In this context, I have discussed the implications of Islamic personal law in India. I have argued that since a democratic state is philosophically committed to safeguarding religious liberties, it must work to create the conditions that can synch the practice of religious liberty with the principles of social and political justice.

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