

**Title- Right to be worshipped: An analysis of some recent cases filed by Hindu deities  
through their next friends**

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**Abstract:**

Secularism is the basic structure of India and it is not so from the day of independence, rather it is from the ancient period. People living there have deep belief & faith in their deities like Lord Rama, Lord Shiva, Lord Krishna, Goddess Durga etc. It is very difficult to explain and understand the term Hindu in just a few words. In fact, Hinduism is not a religion, but a lifestyle of Indian people living there. Many invaders came in India and tried a lot to destroy the image of our country and remove the culture of Hinduism from the country, but they remained unsuccessful.

*The philosophy of Hinduism is based on “Vasudhaiva Kutumbakam”, a Sanskrit phrase found in Hindu texts “Maha Upanishad” and it means “The whole world is one family”.*

These invaders took benefit of this liberal policy of Indians and rule upon Indians for hundreds of years. In reality, Hinduism is the glory and ornament of the nation.

Some historic and religious places have deep connection with Hindu deities and so with their followers also. Sentiments of these followers were greatly affected by the invaders, who tried to change the very character of these places of worship and erected mosques or churches in place of these temples. *The act of changing the character of religious places by the invaders at that time and the support of current generations to restrict the restoration of the original identity of these places is like a fraud with the rest Indians of current generation and with the future generations also.* This is also violative of the fundamental rights of Hindus for worship to their Lords.

In 1991, Indian legislation passed an Act named Places of Worship Act which is under challenge in the court now. After the very critical ruling of Ayodhya verdict last year, the issues of Kashi Vishwa Nath temple and Mathura temple got accelerated. In this article, author beautifully discussed that whether it is right thing to do to correct the mistakes done in our past? The importance of these religious places in Hindu religion is undoubted and need not to discuss here. Even the Muslim community didn't deny the relevance of Hindu deities over

these places and remained unsuccessful to justify his possession on these sites whereas Hindus have shown their all documents to prove their ownership over these sites. Now the ball is in the court's hand to re-image the real identity of the nation by deciding the petitions filed positively and people have great faith in our judiciary which prove itself many times in rare & complex situations.

*“Yada - Yada hi Dharmasya, Glanirbhavati Bharata*

*Abhythanamadharmasya, Tadatmanam Srijamyaham*

*Paritranaya Sadhunang, Vinashay Cha Dushkritam*

*Dharmasangsthapanarthay, Sambhabami Yuge – Yuge”<sup>1</sup>*

## **Introduction**

The right of religious freedom is a divine law. It is not fully correct to say that our Indian Constitution provides religious freedom to all people, whereas the constitution just saves and protect that divine law under Article 25 & 26, which is the fundamental subject of whole humanity and prevailing at this stone since the emergence of human being.

India is a big country having multi religions, castes, languages, fashions, living style, eating habits and customs. Many invaders came in India and rule over there for hundreds of years. They tried a lot to destroy the image of country and to diminish the belief & faith of people in their deities. They convert the religions of people by compulsion and change the character of the places of worship by destroying the thousands of old & historical temples and construct mosques or churches there. But even after ruling for hundreds of years, they remained failed to destroy the basic structure of people's faith and belief in their deities. The culture of India is also so rich that these conversions have little impact upon the culture of country.

Conversion of Temples into Mosques or Churches is not a matter of just 'Hindu vs. other religions'; rather it is very difficult for everyone to understand the term Hindu. The term "Hindu" is not easy to explain and understand in just few words. Many scholars have done

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<sup>1</sup> Verses 7 & 8 chapter -4 "The Holy Book – Shri Mad Bhagvad Gita"

excellent work in defining the living style of Indian people under Hinduism. Eminent Scholar and Member of Parliament Shashi Tharoor beautifully explains the culture of Hinduism in his book “Why I am Hindu”. Basically, Hinduism is a life style of Indian people following by them from the last thousands of years. *They worship different Lords and the philosophy of Indians is based upon “Vasudhaiva Kutumbakam”, a Sanskrit phrase found in Hindu texts “Maha Upanishad” and it means “The whole world is one family”.*

Invaders took benefit of this liberal policy of Indians and tried a lot to destroy the image of the country and blend the culture of country by changing the religions of people and changing the character of places of worships forcefully. But the belief & faith of Indians in their deities is so strong and deeply rooted that even after ruling for hundreds of years, the foreign rulers and invaders remained unsuccessful to diminish the Hinduism from the country. One must understand that Hinduism is the ornament and glory of the nation, without which it does not have any real identity.

Every Indian has a duty to maintain the image of the country seeming to the rest of world, that’s why, they have a right also to restore the original identity of the nation, which has been destroyed and faded by some invaders, by correcting the mistakes done in the past.

There are many reasons behind the latest petitions filed in the Supreme Court challenging the constitutionality of Places of Worship Act, 1991 specifically in regards to Lord Shiva Temple in Varanasi & Lord Krishna Temple at Mathura. First reason is that these properties belong to Hindus. Secondly, these properties are not ordinary properties and connected with main deities of Hinduism i.e., Lord Krishna and Lord Shiva, who are the essential Lords of Hinduism and without worshipping these Lords, the very existence of Hinduism will be lost. Thirdly, *the act which is substantially wrong, cannot be made valid under the shadow of procedural laws.* Thus, when the act of invaders to convert the character of religious places is itself wrong, cannot be supported by taking the plea of limitation act or some other law. *The act of changing the character of religious places by the invaders at that time and the support of current generations to restrict the restoration of the original identity of these places is like a fraud with the rest Indians of current generation and with the future generations also.* This is also violative of the fundamental rights of persons following Hinduism and worshipping their Lords. **Shri Guru Tegh Bahadur Ji** has been remembered for giving up his life for **freedom**

**of religion**, reminding Sikhs and non-Muslims in India to follow and practice their beliefs without fear of persecution and forced conversions by Muslims.

### **Hindus & Hinduism**

**Hindus** are persons who regard themselves as ethnically, culturally, or religiously adhering to aspects of Hinduism. Historically, the term has also been used as a cultural, geographical and later religious identifier for people living in the Indian subcontinent.

The historical meaning of the term *Hindu* has evolved with time. Starting with the Greek & Persian references to the land of the Indus in the 1st millennium BCE through the texts of the medieval era, the term Hindu implied an ethnic, geographic, or cultural identifier for people living in the Indian subcontinent around or beyond the Sindhu (Indus) river. By the 16th century, the term began to refer to residents of the subcontinent who were not Turkic or Muslims.

The historical development of Hindu self-identity within the local Indian population, in a religious or cultural sense, is unclear. Competing theories state that Hindu identity developed in the British colonial era, or that it may have developed post-8th century CE after the Islamic invasion and medieval Hindu-Muslim wars. A sense of Hindu identity and the term *Hindu* appears in some texts dated between the 13th and 18th century in Sanskrit and Bengali. *The 14th- and 18th-century Indian poets such as Vidyapati, Kabir and Eknath used the phrase Hindu dharma (Hinduism) and contrasted it with Turaka dharma (Islam)*. In the 18th century, the European merchants and colonists began to refer to the followers of Indian religions collectively as *Hindus*, in contrast to *Mohamedans* for Turks, Mughals and Arabs following Islam. By the mid-19th century, colonial orientalist texts further distinguished Hindus from Buddhists, Sikhs and Jains, but the colonial laws continued to consider all of them to be within the scope of the term *Hindu* until about mid-20th century. Scholars state that the custom of distinguishing between Hindus, Buddhists, Jains and Sikhs is a modern phenomenon.

The Hindu right is especially bitter toward Islam, particularly in the context of Muslim rule over the Indian subcontinent for much of the past millennium. While this overlooks the contributions—food, art, architecture, to name a few—of Indian Islam, as well as the religion’s more mystical nature relative to Middle Eastern Islam, the bitterness is rooted in a real history

of dominance by a minority that sometimes engaged in the destruction of important Hindu temples.

Islam arrived in the subcontinent via trade in Kerala, during the lifetime of the Prophet Muhammad, and through the conquest of Sindh by the Umayyad Caliphate in 711. Gradually, its reach spread, mostly through further conquests, and until the late 17th century, Muslim dynasties were politically dominant throughout most of the subcontinent until the rise of the Marathas. Since Hinduism is not organized institutionally in a central fashion like Catholicism, coordination among Hindu rulers was limited and local political variants prevailed throughout the subcontinent.

The attitudes of Muslim rulers toward the native Hindu (and Sikh and Jain) populations ranged from the almost total tolerance of the Mughal Emperor Akbar, who built and patronized temples (for example, a temple to the important Hindu god Krishna at Vrindavan) to the extreme intolerance of his great-grandson Aurangzeb (who demolished parts of the same temple in Vrindavan). Attitudes toward conversion and tolerance were more liberal among Muslim political rulers and less so among clerics. One of the most famous and prominent religious scholars of the Mughal Empire, Ahmed Sirhindi, deplored the tolerant policies of Akbar and wrote regarding Hindus and Sikhs: “With whatever intention and purpose they are killed, the humiliation of infidels is for the Muslims life itself.”

The history of Hinduism covers a wide variety of related religious traditions native to the Indian subcontinent. Its history overlaps or coincides with the development of religion in the Indian subcontinent since the Iron Age, with some of its traditions tracing back to prehistoric religions such as those of the Bronze Age Indus Valley Civilization. Scholars regard Hinduism as a synthesis of various Indian cultures and traditions, with diverse roots and no single founder. This Hindu synthesis emerged after the Vedic period, between ca. 500–200 BCE and ca. 300 CE, in the period of the Second Urbanisation and the early classical period of Hinduism, when the Epics and the first Purānas were composed. It flourished in the medieval period, with the decline of Buddhism in India.

Hinduism is the world’s oldest religion, with roots and customs dating back more than 4,000 years. Today, with about 900 million followers, Hinduism is the third-largest religion behind Christianity and Islam. Roughly 95 percent of the world’s Hindus live in India. Because the religion has no specific founder, it’s difficult to trace its origins and history. Hinduism is unique in that it’s not a single religion but a compilation of many traditions and philosophies.

Hinduism embraces many religious ideas. For this reason, it's sometimes referred to as a "way of life" or a "family of religions," as opposed to a single, organized religion.

### **Hinduism vs. Secularism**

Hinduism is much wider concept than secularism. India is a secular state and as per our constitution, our country, itself, has no particular religion. It does not mean that the people of India do not profess any religion, but it means that the people have full freedom to profess any religion. State cannot bound people to follow any particular religion. Preamble of our Constitution was amended once only that too in 1975 via 42<sup>nd</sup> amendment<sup>2</sup>. Prior to this amendment, 'secular' word was not a part of preamble and it was added via this particular amendment by Indira Gandhi Government during emergency period. During partition, Pakistan declares itself as "Islamic Country", but India didn't do so and India keeps its door open for all religions with open heart, because it's the quality of generic culture of India to respect all religions. In landmark case of "S. R. Bommai", Supreme Court gets honoured to interpret the true sense of Secularism. In Bommai case, a nine Judge Bench of the Supreme Court explore the concept of secularism in the Indian Sociological context. As per Sawant, J.: ".....religious tolerance and equal treatment of all religious groups and protection of their life and property and of the places of their worship are an essential part of secularism enshrined in our constitution....."<sup>3</sup> What is "secularism", is also well defined by many judges also in different cases. D.M. Dharmadhikari, J. describes that, "Secularism is the basic structure of the Constitution."<sup>4</sup> Swatanter Kumar, J. said, "Secularism is the essence of our democratic system, Secularism and brother-hoodness is a golden thread that runs through the entire Constitutional scheme formulated by the Framers of the Constitution."<sup>5</sup>

Unfortunately, even after independence, our political parties still continued to follow the 'Divide & Rule' policy of Britishers. They use the term secularism as a weapon against the Hindus, but secularism is so much pure that it must be applied upon all religions without any

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<sup>2</sup> The Constitution (Forty-second amendment) Act, 1976 (91 of 1976)

<sup>3</sup> *S. R. Bommai v. Union of India* 1994 AIR 1918, 1994 SCC (3) 1

<sup>4</sup> *Aruna Roy v. Union of India*, (2002) 7 SCC 368, para 56

<sup>5</sup> *Sindhi Education Society v. Govt. (NCT of Delhi)*, (2010) 8 SCC 49, para 108

discrimination or classification of religions. The greediness of vote bank of political parties melts this term to use in favour of minority communities only, whereas in actual, it is not so.

### **Constitutional Provisions & Judicial Interpretation**

The future and success of India is not alone in this Constitution, but in the laws of God also upon which this very Constitution is founded. Article 25 & 26 provides religious freedom to all persons. *The framers of our Constitution meant we were to have freedom of religion, not freedom from religion.* Under Article 25, all persons have a freedom of conscience and free profession, practice and propagation of religion subject to public order, health, morality and other provisions of part -3 of the Constitution. Under Article 26, freedom to manage religious affairs subject to public order, morality and health is provided to every religious denomination or any section thereof. ‘A. N. Ray’, C.J. held in a landmark case that “it is not fundamentally correct to convert any person to one’s own religion and it should not be forget that that Article 25(1) guarantees ‘freedom of conscience’ to every citizen, and not to any particular religion”.<sup>6</sup> Hinduism relates to Vedic era, but basically Hinduism is not a religion, it’s the life style of the people of Indus valley. People used to worship different gods, wear different clothes, eat different food, spoke different languages and have a lot of other cultural diversity. There was a huge diversity at every step. But slowly Hinduism takes the name of religion and people starts using this word in substitute of religion. Due to this diversified culture, our constitution makers have provided the religious freedom under Chapter – 3 as fundamental rights. They knew very well that it was almost impossible to weave a story of all religions with the same thread. Gyan S. Misra & M. Katju, JJ. Said, “Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects. It was due to the wisdom of our Founding Fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country.”<sup>7</sup> V. N. Khare, C.J. Said, “The beauty of the Indian Constitution is that the entire structure of the country is based thereupon. It is the very pillar upon which the democracy of India stands.”<sup>8</sup>

### **Judicial Challenges in Front of Restoration of Hinduism**

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<sup>6</sup> *Rev. Stanislaus v. State of M. P.*, (1977) 1 SCC 677, para 20

<sup>7</sup> *Kailas v. State of Maharashtra*, (2011) 1 SCC 793, para 25

<sup>8</sup> *Uniform of India v. Naveen Jindal*, (2004) 2 SCC 510 para 27

In 1991, Places of Worship Act was passed by Indian legislation, which is under challenge in supreme court now. This Act closes the door of court for all the disputes based on the conversion of character of places of worship and it was declared under section -4 of the said Act that the religious character of a place of worship existing on the day of independence i.e., 15<sup>th</sup> August, 1947 shall continue to be same as it existed on that day. Section 4(2) of the Act abate all the cases pending in any court or tribunal of India proceeded with respect to conversion of place of worship.

Section 4 (3) of this Act specifically overrides the above discussed Section 4(1) & 4(2) and provides that “nothing contained in sub-section 1 & 2 shall apply to”

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.

It is also pertinent to discuss here section -5 of this Act also, which specifically exempt the “Ram Janma Bhoomi – Babri Masjid” from the application of this Act, and this suit was settled last year by Supreme Court and handover the possession of the disputed site to “Lord Ramlalla Virajman – The Live Deity”.



Petitioner has challenged the section -4 in his petition, where 15<sup>th</sup> August, 1947 date is declared as base date to check the character of religious places as there are many historic and religious places were demolished before independence and the issues were not settled as on that date. Petitioner alleged that legislation have placed an arbitrary cut-off date in the Act by which the “illegal barbarian acts of invaders” were allowed to continue in perpetuity and also it barred Hindus, Sikhs, Jains and Buddhists from restoring their places of worship and pilgrimage.

The date “15<sup>th</sup> August, 1947” itself remember us the days of Mughal invaders followed by Britishers colonial era. Section 7 is also challenged under the same petition, which gives overriding effect to this Act over all other enactments for the time being in force, on any issue having inconsistent with this Act.

Mahendra Kumar, one of the advocates in Mathura case told that, “We welcome the news of the Supreme Court agreeing to examine the law. We have the registration papers of the property and it’s a confirmed property of Hindus”.

Muslim groups having displeased by this petition pointed out that unlike Ayodhya, there are already grand temples exist in Varanasi and Mathura but they didn’t justify the conversion of these special places of worships. Mathura site is Lord Krishna birth place as like as Lord Rama in Ayodhya and The Kashi Vishwanath Temple is considered as the most prominent site from the 12 Jyotirlingas of Lord Shiva. It is alleged in the both cases that The Muslim Emperor Aurangzeb have demolished these sited in 17<sup>th</sup> century and erected mosques over there. Although these rulers have demolished thousands of temples to destroy the very culture of the Hinduism from India, but people following Hinduism & living in Hinduism life style claims great significance of these places in their life and they have a deep sentiment connected with these historical temples.

The temple side’s petitioner, Vijay Shankar Rastogi, along with four others, claims that the Gyanvapi Mosque came up in 1669 after Mughal emperor Aurangzeb pulled down a portion of the 2,000-year-old Kashi Vishwanath Temple. Rastogi said he has filed the petition in his capacity as the next friend of the Ancient Idol of Swambhu Lord Vishweshwar.

The petitioners claimed that it was King Vikramaditya who had built the temple about 2050 years ago in the middle of where the Gyanvapi Mosque currently exists and consecrated

idols of Lord Vishweshwar. It was partly pulled down several times during the Muslim rule in India, the petitioner said.

Hindus have experienced both historical and ongoing religious persecution and systematic violence, in the form of forced conversions, documented massacres, demolitions and desecration of temples, as well as the destruction of educational centres, these events are to be viewed in their historical context and relative impact.

“Absent the faith and belief of the devotees, the land holds no distinguishing features that could be recognised by this court as evidence of a manifestation of God at the disputed site. ***It is true that in matters of faith and belief, the absence of evidence may not be evidence of absence***”, ruled the Supreme Court in the Ayodhya verdict. The Muslim community shows the mixed response over Ayodhya verdict. Prof Faizan Mustafa said, “It looks like the Supreme Court gave importance to belief over other concerns by giving the disputed land to construct Ram temple there.”

### **Conclusion**

Secularism doesn't mean 'freedom of any religion' only, but also an assurance to not interfere with any other religion, ***nor secularism is so wider concept to shine over Hinduism, rather Hinduism is much broader to include secularism in itself***. In fact, secularism is a much smaller branch of study on how to live in a society having multi-religious communities, which is the core concept of Hinduism. Secondly, ***which is illegal to do directly can not be made legal indirectly***. If these properties really belong to Hindu deities from ancient times, then nobody can claim these properties forcefully by converting the real identities of these places of worship. It was better for us if we teach the broader concept of 'What is Hinduism' to our coming generations instead of teaching them secularism i.e., “a limited branch of Hinduism” and fading the real glory of the nation. Essential deities of Hinduism have a full right to be worshipped by their followers. No one can take this right from these idols' forcefully conversion of places of worship or change of religions. They must be getting honoured by all means including the 'right to be worshipped, which they deserved in actuality. Secularism is not a new concept in modern India, rather it should be applied in ancient times, which takes away the rights of Hindus from them. Correcting the mistakes of invaders and foreign rulers

will be remarkable in the history of the nation to re-glorify its real image before the coming generations.