PLURALISM AND INDIA: AN EXAMINATION OF THE NATION'S CONSTITUTIONAL FRAMEWORK

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Abstract

The paper provides an analysis of India's diversity and examines the interrelationship among various factors that contribute to its variation, tracing its evolution from a colonised entity lacking its own rights to an independent and rapidly developing nation. Numerous scholars acknowledge India as a multifaceted society due to the significant variety of its ethnic groups, languages, religions, and customs. The Indian Constitution, adopted in 1947 following India's independence, serves as a significant example of plurality. The concept of pluralism originated in the pre-Socratic era, articulated by philosophers including Anaxagoras, Archelaus, and Empedocles during the 5th century B.C. The research paper will provide an overview of his ideology, as well as an examination of the ideologies of Indian economist and philosopher Amartya Sen. This research paper aims to inform readers about the landmark cases that have tested the Constitutionality of this nation in the context of pluralism. The author elucidates the differences between cultural diversity and pluralism, as there exists a potential for confusion among individuals regarding these concepts.

Keywords*: Pluralism, Secularism, Religion, Constitution, Minority.*

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INTRODUCTION

As discussed earlier, the context of Indian pluralism goes way beyond religion. It is faith, trust, the constitution, the marginals, the Indians, or the citizens. Indian ethos is constructed in a way that sees things beyond the surface level of religion; we see more than religion. Though, as Indians, there are various versions of us, some, as discussed above, look beyond religion and have one national feeling, while on the other hand, we have the ones who might at first or always find difficulty as experiencing pluralism is, for us an easy virtue, but is a totally different thing when it comes to practising in theory, as it demands much more of us[1]. Again, experiencing pluralism is very effortless, but defending the idea of pluralism against dangerous, planned attacks is nothing but intellectual exercise.

But thinking deeply about these lines, the author would like to raise some questions or would love to discuss that,

1) Why do we just talk about India when we just talk about democracy? Are other neighbourhood countries not good examples of democracy? Why do we need to compare them?

2) Why are so many teenagers becoming religious, and is it another propaganda, or is it the same with every other religion, and what's the theory behind it?

3) Why do we just talk about caste and religion only when we think of pluralism and not gender and sexual orientation? Is pluralism theoretically talking about caste and religion? Can this theory NOT be applied depending on the kind of orientations present in modern-day India?

WHAT IS THE DEMOGRAPHIC STRUCTURE OF INDIA, AND HOW DOES IT DEAL WITH THE CELEBRATED DEMOCRACY?

India has been a great appreciator and welcomer of all the refugees from the neighboring countries, thus making sure that its relationship with the already existing ones doesn't fade away and that it can get help in the form of humanitarian aid from these countries. Now, if we elaborate more on India's democratic scenario, what exactly is going on might differ when talked about and might differ when it's being experienced.

Pluralism is a cornerstone of Indian democracy. According to this Indian ethos, every other community feels equally represented, and no other community pressures or dominates the other.

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[1] Amartya Sen, "Indian Pluralism", *India International Centre Quarterly* 1993.

Indian diversity goes beyond religion and extends to language, culture, and religion, which can be seen in the eighth schedule of the constitution of India, which includes over 22 official languages[2]. Indians celebrate a multitude of festivals and national holidays, each with its rituals and traditions. The Pew Research Centre survey asked Indians of all religious backgrounds whether they participate in celebrating one national holiday (Independence Day), a few religious festivals associated with various groups (Diwali, Holi, Christmas, and Eid), and the Western holiday of Valentine's Day, which recently has gained some popularity in India.

Hindus who are less religious are more likely to say they participate in celebrations of Christmas. These celebrations also are more common among Hindus in the South and among Hindus with a college education. For example, 23% of Hindus in the South

One-in-five Indian Muslims, three-in-ten Christians say they celebrate Diwali

% of Indian adults who say they participate in celebrations of …

	Independence Day	Diwali	Holi	Valentine's Day	Christmas	Eid
General population	87%	85%	78%	21%	18%	17%
Hindus	88	95	88	22	17	7
Muslims	82	20	16	14	10	93
Christians	79	31	25	27	97	11
Sikhs	77	90	87	26	19	5
Buddhists	86	79	70	20	13	9
Jains	90	98	93	31	18	9

Source: Survey conducted Nov. 17, 2019-March 23, 2020, among adults in India. See Methodology for details.
"Religion in India: Tolerance and Segregation"

PEW RESEARCH CENTER

say they celebrate Christmas, compared with about half as many in the Northeast (11%), even though both regions have a strong Christian presence. Christmas is also more commonly celebrated by urban Hindus than rural Hindus (23% vs. 14%). Muslims vary regionally when it comes to celebrating Diwali and Holi. Among Muslims in the North, nearly a quarter (24%) say they celebrate Diwali, and 15% participate in Holi festivities. In Western India, even larger shares of Muslims say they participate in Diwali (39%) and Holi (31%) celebrations[3]. Following were the findings of the research centre's survey.

If we start to compare the culture and diversity of the other nations with India, the purpose of the paper would shift somewhere else and would not hold a greater value for the readers, so to sum up or just to include it, the author adds that India with its refugee policies has made itself democratic and much more diversified as we were earlier just for the namesake. The world faces

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[2] Department of Official Language, "Languages Included in Eighth Schedule of Indian Constitution" (Government of India) *available at*: https://rajbhasha.gov.in/en/languages-included-eighth-schedule-indian-constitution (last visited on: 10.11.2024).

[3] Neha Sahgal, Jonathan Evans, Ariana Monique Salazar, Kelsey Jo Starr & Manolo Corichi, "Diversity and Pluralism", *Pew Research Center* June 29, 2021, *available at*: https://www.pewresearch.org/wp-content/uploads/sites/20/2021/06/PF_06.29.21_India.full_.report.pdf (last visited on: 10.11.2024).

the challenge of die-out resources, climate crises, increasing populations, regional disputes, and accentuated differences within and across national boundaries. These have led to mass migration flows across countries, continents, and hemispheres. India still continues to advocate the primacy of diversity and rights and will need to go much further. India is also subject to the same pressures as the rest of the world. Specifically, it has porous borders with its neighbours, Pakistan, Bangladesh, and Afghanistan, that enable significant illegal immigrant flows. While the official number of immigrants from these countries totals 3m[4]. Political pluralism can be seen in a very diversified and not-so-dominant way in a political environment. The clearly defined and established institutions resulted in the division of the state itself internally. Politics is all about gathering popularity and influence by having competing interest areas, so political parties are always under pressure from interest groups. Though ideologies, personal goals, and ambitions are the main reasons for these internal divisions, cross-party relations are much more common among parliamentary members. This was commented on way before in books authored by Rajni Kothari and Rudolphs, the books titled, 'Politics in India', published by Orient Longman, and 'In Pursuit of Lakshmi: The Political Economy of the Indian State', published by the University of Chicago Press, respectively.[5]

HOW DOES YOUR POLITICAL OPINION AFFECT YOUR UNDERSTANDING OF A PARTICULAR RELIGION?

Do you ever wonder why the youth, or simply the people, have been becoming or starting to lean more towards the right wing in recent years? This seemed impossible in the 1970s and 1980s. People used to think that in recent years when there would be a significant rise in globalisation, the individual identity of many countries would be diminished. Only one single global identity would exist, but the total opposite happened. Countries became more religious identity-sensitive, which eventually made people give more importance to cultural, individual and religious identity, making right-wing popular. It has started to influence people many people, but how did this shift happen?
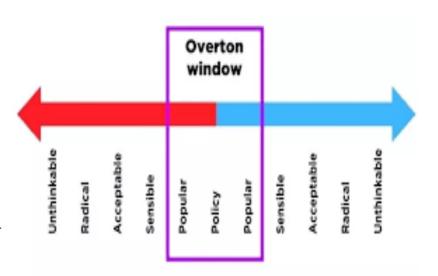
But who exactly are the left and right wing? The political parties who support more liberal and secular ideology call themselves the left-wing. While the party that emphasises more on cultural,

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[4] Greater Pacific Capital "India's Diversity is a Strategic Asset", *available at*: https://www.greaterpacificcapital.com/thought-leadership/indias-diversity-is-a-strategic-asset (last visited on: 10.11.2024)

[5] Andrew Wyatt, "Political Pluralism: India's Party Politics Deliver Uneasy Win for BJP", *The Hindu Centre for Politics and Public Policy* June 18, 2024, *available at*: https://www.thehinducentre.com/the-arena/current-issues/political-pluralism-indias-party-politics-deliver-uneasy-win-for-bjp/article68299551.ece (last visited on: 10.11.2024).

conservative, and religious ideas calls itself the right wing. The major difference was that the leftists had a more capitalist approach while rightists had a socialist one, but this definition doesn't sit right in the Indian context, as both the wings follow the socialist idea. In the global context to get an idea before hundreds of years ago, the whole of Europe had Marxism followed, Communism in the Soviet Union, and Maoism in China; each one of them showcased the left-wing idea in the population and had a strong hold over the country's academia, which emphasised more on leftist ideology as expected in the Indian context during the very much celebrated "Ram Mandir" case in the 1990s where, until the morning of December 6, 1992, it was the Babri Masjid, a mosque built in 1528 and named after the Mughal king Babur, that stood at that place. A mob of Hindu nationalists pulled down the mosque, chanting religious slogans after more than a decade of an angry and, at times, violent campaign. After years of being closed to the public, in November 2019, India's Supreme Court ruled that the site must be handed over to a trust that would be specially set up to oversee the construction of a Hindu temple. A separate piece of land in Dhannipur village on the outskirts of Ayodhya was allocated to Muslims for a mosque that may serve as a replacement for the Babri Masjid. Its construction is yet to begin.[6]

This was one major reason back then for popularised right-wing religious opinion, and now many YouTube videos, articles and podcasts are on spirituality and religion that might have the watcher there. My analysis is the theory or the concept of the "Overton window",

which talks about a scale that has the ideas of both left and right-wing and is, at some point in time, popular. It starts with popular ideas that might be sensible and acceptable and, on the extreme, ends with radical and unthinkable notions of both sides. This overturn window is never constant; with time, it keeps on shifting from left to right, and the notion of the people keeps on changing according to who is heading the government. The idea is that any policy falling outside

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[6] Areesha Lodhi, "Why is India's Ram Temple in Ayodhya Controversial?", *Al Jazeera* Jan. 22, 2024, *available at*: https://www.aljazeera.com/news/2024/1/22/why-is-indias-ram-temple-in-ayodhya-controversial (last visited on: 11.11.2024)

the Overton window is out of step with public opinion and the current political climate and is formulated to try and shift the Overton window in a different direction or to expand it to be wider.[7]

Once unthinkable ideas are now the same ideas on which our policies are being framed. Be it the abolition of article 370, discussing UCC, the making of Ram Mandir, making a law on triple talaq, etc., nobody could even think of these ideas back then as they seemed to be very radical and unthinkable in the 80s; it felt like a joke to ministers that time when somebody would raise an issue regarding that. The side this overturn window shifts becomes more popular among the youth, and then they start to rationalise according to what seems right to them. The downfall of communism is also one major reason, as we can experience in the Indian ethos the rise of capitalistic ideas (not much as of now)and how we accepted the idea of it with open hands for our economy is a potential nightmare of any possible communist. And because of this capitalistic approach, people cannot connect themselves more to socialism and communism, and because capitalism and the left wing do not have anything in common, people who support capitalism also somewhat lean toward the right wing and their ideologies as well. Earlier, the left wing had great control over the academia and media of the country, which is now destroyed by social media. Thoughts that were prohibited by the media in its controlled environment started to come out so openly and widely because everyone got access. Things that should've been confidential and things that should have been not circulated on the internet are still on the internet, easy and accessible for everyone to go through. I'm so not against the idea of free access to the internet; it sure is a basic amenity these days, both academically and financially, but where did the restrictions go? Do you not think the religious educators sitting online are the reason for propagating the wrong idea about religion and Hindutva and instigating the viewers in the wrong way? This would definitely be one downside of the right to free speech.

ANOTHER PHASE OF PLURALISM - GENDER PLURALISM

The landmark judgment of *National Legal Services Authority* v. *Union of India*[8] established that transgender people are also a gender in India and will be termed as the 'Third Gender'. In this case, The Court had to decide whether persons who don't fall under the male/female gender binary can be legally recognised as "third gender" persons. It had to decide whether ignoring non-binary gender identities is a violation of fundamental rights guaranteed by the Constitution

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[7] New Statesman, "What is the Overton Window?", *The New Statesman*, *available at*: https://www.newstatesman.com/politics/2015/04/what-overton-window-politics (11.11.2024).
[8] AIR 2014 SC 1863.

of India. It referred to an "Expert Committee on Issues Relating to Transgender" constituted under the Ministry of Social Justice and Empowerment to help it decide.[9]

This was a historic judgement where the court recognised "third gender"/transgender persons for the first time and discussed "gender identity" in detail. The Court said third-gender persons are entitled to fundamental rights under the Constitution and International law. It also directed state governments to create mechanisms to realise the rights of "third gender"/transgender persons. The Court upheld the right of all persons to self-identify their gender. Further, it declared that hijras and eunuchs can legally identify as "third gender". The Court clarified that gender identity did not refer to biological characteristics but rather referred to it as "an innate perception of one's gender". Thus, it held that no third-gender persons should be subjected to any medical examination or biological test that would invade their right to privacy.[10]

Although the Indian constitution promises gender equality and freedom from gender and religious discrimination, the pluralist nature of the Indian legal system has not delivered on this promise. Gauri Sawant, India's first trans mother and transgender activist, says, *"Acceptance within the family was the foremost thing that would bring a change in society."* Every year, the month of June is a developmental occasion for transgender persons. Pride Month is, in fact, social media as the fight for gay rights and social justice. The community is still fighting to have identity cards even after the court recognised our gender; what is there to celebrate Pride Month? Even after that verdict, we don't have jobs, and neither is their implementation [of the court order]. There should be a one-window approach for the transgender community.[11]

Legal pluralism, which is a key feature of the Indian legal system, mainly involves the existence of many laws within the same state. The efforts to codify decades and even centuries-old religious laws resulted in the emergence of India's official faith-based pluralist system. Although it was practised long before, this system includes "Mohammedan" or Sharia law, whose legal roots are traced back to the Sharia Act of 1937, which codified a section of the Fiqh (the law that has an Islamic basis and is interpreted in Islamic sources). For family issues, Hindu Law is applied and used largely only. However, Hindu law covers Sikhs and Buddhists as well, thus making it more inclusive than the Mohammedan law. Muslim women are particularly badly off

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[9] *Ibid.*

[10] *Ibid.*

[11] Sushmita Ghosh, "7 Years After SC Judgment, Third Genders Say They Feel Like Second Class Citizens", *India Today* June 16, 2021, *available at*: https://www.indiatoday.in/india/story/supreme-court-nalsa-judgment-third-genders-transgenders-pride-month-1815578-2021-06-16 accessed 12 November 2024 (last visited on: 05.01.2025)

under religious laws. This was starkly highlighted in the Shah Bano Begum case[12], where a Muslim woman was denied alimony by her husband under Sharia law, although if she were a Hindu or Christian and treated under different religious laws, she would have got relief. Although the Indian Supreme Court overturned the religious court's decision and the Muslim Women (Protection of Rights on Divorce) Act 1986 was passed after the collapse of the marriage of Muslim women, their rights under Sharia law are still minimal.

In fact, there have been cases where polygamous marriages have been accepted in Shari'a courts where men have been denied money to take care of children to their first wife on the grounds that they prefer their second wife, which is not seen in Christian or Hindu cases. Moreover, the triple Talaq rule has been recognised by Sharia courts in India – men can divorce their wives by saying Talaq – divorce – thrice. Women, on the other hand, must go through months of lengthy arbitration to achieve the same result and are at a disadvantage if they are in an abusive relationship[13]. Lastly, Sharia courts have also given unfavourable property rights to Muslim women except for recognising the traditional Mahr - a gift a husband gives to his wife during their marriage. So, the impact of legal pluralism on women is that they have fewer rights than other Indian women, and we have a stratified citizenry where social cohesion is absent.

On religious tensions, legal pluralism has had two effects. The purpose of legal pluralism in the framework of faith-based organisations is to address the issues of religious minorities' autonomy and partnership with them. However, pluralism has made the political divide between Hindus and Muslims worsen through the positioning of people into faith-based legal compounds. As evidenced by recent polls, this viewpoint is emerging; hence, only 22% of the Indians polled indicated their agreement that until the implementation of the Uniform Civil Code, there can never be integration between the religions of India. This indicates that legal pluralism has been one point that has been used to entrench differences between Hindus and Muslims. An Interview with Elham Manea dashed our optimism when she quipped that pluralism, by its very nature, puts one team above the other and does not promote unity but ensures that nasty divisions are created within society. Also, it has changed the understanding of religion many citizens have developed. However, even though India is culturally diverse, and the religious groups are highly diverse as well, pluralism is a rude approach that reduces the faith groups to

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[12] *Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556.

[13] Poppy Kemp, "Legal Pluralism in India - Divisive and Discriminatory?", (Cambridge University Law Society), *available at*: https://www.culs.org.uk/per-incuriam/legal-pluralism-in-india-divisive-and-discriminatory#:~:text=Although%20the%20Indian%20constitution%20guarantees,poor%20treatment%20under%20religious%20laws (last visited on: 12.11.2024).

cultural blobs. This is evident from a MARG survey[14] that was conducted on 481 Hindus in Bombay in 1993, where 13% of the Hindus said they would not hire a Muslim at their homes, 20% of the Hindus believed Muslims should not be banned in the armed forces, and 28% believed that Muslims and Hindus are so different that they cannot live together. Lacing them into faith-based legal enclaves. Recent surveys have reflected this increase in tensions; hence, 78% of Indians interviewed insisted that until a uniform civil code is established, there will never be social cohesion between the religions in India. This suggests that legal pluralism has been a central point in cementing the differences between Hindus and Muslims, a view endorsed in an interview with Elham Manea, who noted that pluralism, by its nature, leverages one group above another and never serves to develop social cohesion, but rather creates harsh swathes within communities. Therefore, legal pluralism is no longer suitable for India. There is a need for changes in the new 'one law for all', as the practices faced by many Indian Muslim women who are discriminated against and to right the wrongs of creating a religious harmonious state.

CONCLUSION

India through pluralism: It remains, in more general terms, inundated with constitutional pluralism arising from its tremendous religious and cultural diversity. Under the principle of pluralism, the Constitution protects the right to govern oneself in different communities, but the matter remains more of a theoretical question. Arranging society according to legal and religious categories and adhering to legal pluralism leads to disparities for women and society groups. Landmark cases like *NALSA* v. *Union of India*[15] Looking into the legal system of the country and the judgment delivered in Omar Abdullah and the Shah Bano case, some of the reasons why people demanded the implementation of the Uniform Civil Code are worth mentioning. Lately, the political divide coupled with the right-wing agenda has exaggerated the chasm between religion and culture. Either way, the referenced Overton window shift, as well as social media reinforcement, have mobilised multiple religions against each other and hence impacted social solidarity.

Hence, for the country to achieve a true form of pluralism, there is a need to enhance its position to close this gap between laws enacted and social norms. This includes legal matters concerning the change of some laws, such as the ongoing process to pass a Universal civil code

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[14] John Ward Anderson, "India's Muslim fear new physical threat", *The Wastingaton Post* Mar. 11, 1994, *available at*: https://www.washingtonpost.com/archive/politics/1994/03/12/indias-muslims-fear-new-physical-threat/b4cebe13-8385-4107-8dc7-ad7d414394fc/?utm_term=.e2c2b69006e0 (last visited on: 05.01.2025)

[15] *Supra* note 8.

and for intolerance against discrimination. The prejudices cast in the structure and prejudices that are religious, caste, gender, and sexual colour are the essence of India only if social prejudices derived from religion, caste, gender, and sex have been done away with; only then does India stand the chance of being a pluralist democracy where each Indian citizen has rights equally that is protected and respected.