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SECULAR VALUES AND RELIGIOUS REALITIES: A LEGAL EXAMINATION IN THE LIGHT OF INDIAN CONSTITUTION

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I. ABSTRACT

The preamble of the Constitution of India declares India as a secular, democratic, socialist, and sovereign republic. However, in Indian society, clashes between different religious communities can be often witnessed. The disharmony among religious groups in India is caused by various factors, such as colonial policies, political manipulation, media influence, and socio-economic disparities. The state has taken many steps to combat religious disharmony. The Supreme Court has interpreted the constitution, upholding secular values in cases like *S.R. Bommai vs. Union of India*, *Hindu Religious Endowments of Madras vs. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt Case*, etc. To address these issues, the union government has appointed many committees for investigation and recommendations. To resolve the issues, the state must implement a uniform civil code and promote secular education. Effective legal measures and policies are also needed to ensure that religious harmony continues.

II. KEYWORDS:

Secularism, Religion, Constitution, Supreme Court, Fundamental Right

III. INTRODUCTION:

'Secularism is a multifaceted concept that plays a crucial role in modern political and social discourse. At its core, secularism advocates for the separation of religious institutions from state institutions, ensuring that religious groups do not wield political power and that the state remains

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*neutral in matters of religion*². After independence, we adopted our constitution. The Preamble of that constitution declares Bharat, or India, to be a sovereign, secular, socialist, democratic, republic. The constitution does not declare any religion as the religion of the state. But due to historical conflicts and social factors, we face religious disharmony and communal violence. According to data from 2014 to 2021, a total of 190 people have lost their lives³. Shankar Dayal Sharma has rightly observed that '*Communalism begets communalism. Ultimately, none gain; all lose; when communal thinking holds sway over us*⁴.

The Supreme Court of India, in the landmark case of *S.R. Bommai vs. Union of India*⁵ emphasized secularism as a basic feature of the constitution and upheld the principles of secularism to maintain religious harmony.

IV. RESEARCH OBJECTIVES:

1. To examine the constitutional safeguards promoting secularism
2. To evaluate the factors responsible for religious disharmony in India
3. To assess the role of the judiciary in upholding constitutional values regarding religious tolerance and the accountability of the state to maintain secularism
4. To recommend potential reforms and policies to promote religious harmony

V. RESEARCH QUESTIONS

1. How do the tenets of secularism enshrined in the constitution translate into practical safeguards for religious harmony?
2. How did historical legacy impact secular values and lead to religious disharmony?

² "What Is Secularism?" (Oxford Academic) <<https://academic.oup.com/book/28394/chapter-abstract/228768528?redirectedFrom=fulltext>> accessed June 29, 2024

³ Rampal N, "Have Communal Killings Gone up or down? NCRB Data Show 12% Fall in Toll from 2006-13 to 2014-21" *theprint* (August 10, 2023) <<https://theprint.in/india/have-communal-killings-gone-up-or-down-ncrb-data-show-12-fall-in-toll-from-2006-13-to-2014-21/1707687/>> accessed June 30, 2024

⁴ Jai JR, *Commissions and Omissions by Indian Presidents and Their Conflicts with the Prime Ministers Under the Constitution* (Daya Books) 236.

⁵ AIR 1994 SC 1918

3. What are the measures taken by the state to promote secularism?
4. How did the judiciary interpret constitutional values regarding secularism?

VI. RESEARCH METHODOLOGY:

The methodology for research adopted in this paper is purely doctrinal in nature. As included in doctrinal research, a thorough study of the existing literature was conducted. Many cases, articles, books, committee reports, and acts spanning the last few years were studied and analyzed to thoroughly study the intricacy of religious disharmony and secularism in India. The case laws incorporated in the dissertation are those that intricately deal with the dimension of religious disharmony in India. A little bit of historical literature was also studied to understand the origin and concept of religious disharmony in India.

VII. LITERATURE REVIEW:

The paper draws upon key provisions of the Constitution of India regarding secular values and present religious realities. It refers to constitutional commentaries by renowned authors such as M.P. Jain and V.N. Shukla. Also, the book of Tahir Mahmood on Religion and Society has been referred to to analyze the concept. This paper also analyzes landmark cases such as *S.R. Bommai vs. Union of India* (1994), *Hindu Religious Endowment Case* (1954), and others. The literature reviewed in this paper provides a comprehensive framework of constitutional values and judicial precedents regarding secularism.

VIII. HISTORICAL BACKGROUND:

The inhabitants of ancient India were unified, coexisted peacefully, and accepted the customs and cultures of all other communities. There was no such thing as a communal feeling back. Medieval emperors such as Akbar, who abolished the *jajhiya* tax and instituted *Din-I-Ilahi* and *Ibadat Khana*, were examples of secular customs. The recognition and acceptance of diverse cultures and traditions were common in many Indian empires, leading to overall peace and unity within their realms, except for a few

rulers known for their sectarian tendencies, such as Aurangzeb. However, there were leaders like Aurangzeb who damaged temples, compelled conversions, yet the majority of the Indian populace were rulers themselves, being largely uninvolved in such harmful activities. As a result, there was a peaceful coexistence among individuals from various religious backgrounds, embracing their differences and the community.⁶ Communalism is the main product of modern politics in India, which started as a result of the British Empire; the British statesmen grew apprehensive about the safety and stability of their empire in India. During the 1857 rebellion, Hindus and Muslims joined forces, driven by the shared goal of overcoming a mutual adversary. To prevent the emergence of nationalistic sentiments, the British politicians implemented a strategy of fragmentation and control. Consequently, they aligned themselves with the Muslim community to achieve their objectives⁷. It was the backwardness of Muslims that led them to remain underdeveloped. Despite of working on uplifting their conditions, the British caused violence in the name of religion, and they also fomented other divisions in Indian society. After independence, constitution was adopted in 1950, and it declared India to be a secular state.

IX. CONSTITUTIONAL VALUES:

The Constitution of India did not declare any religion to be the state religion. It declared "*equality of status and opportunity*" to be one of the basic ideals of future polity, and non-discrimination on religious grounds one of the people's *fundamental rights*. Twenty six years passed since the Preamble to the Constitution underwent changes to include the term 'secular' in the introductory part that describes the nature of the nation. Nonetheless, the idea of 'secularism' embraced by the Constitution is fundamentally distinct from its Western portrayal -unlike the US Constitution, which features a 'non-establishment clause' creating a barrier between State and religion, and unlike the French principle of 'laïcité', the Indian Constitution does not include such a clause. Religion does not play a

⁶ Ankita, "Case Comment on S.P. Mittal v. Union Of India."

⁷ "Editorial" (Mainstream Weekly) <https://www.mainstreamweekly.net/article106.html> accessed June 29, 2024

significant role in the governance of the state, yet the state is not barred by law from engaging in religious matters, and has historically occupied a central role in this aspect of societal life.

Concerning religious liberty, the Preamble to the Constitution outlines the solemn commitment of the Indian people to protect themselves from "liberty of thought, expression, belief, faith, and worship."⁸

The chapter on people's Fundamental Rights guarantees to the individuals freedom of conscience and right to "*profess, practice and propagate*" religion clarifying that this right is not absolute and can be restricted by the State in the interest of public order, morality, health, and other provisions of the Constitution" [Article 25]. At the same time, all religious communities and every "*denomination thereof are guaranteed freedom to manage their own affairs in religion, acquire and manage property and establish institutions for religious and charitable purposes*" [Article 26]. However the Constitution, makes it specifically clear that these guarantees for religious freedom will not preclude the State from introducing social reforms by law or from "*regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice*"⁹ [Article 25]. In recognition of the nation's religio-cultural diversity, the Constitution entitles every section of citizens in all regions of the country to conserve its distinct culture, language, and script [Article 29], imposing at the same time on all citizens a Fundamental Duty "*to value and preserve the rich heritage of our composite culture.*" [Article 51A]¹⁰

Although the Constitution does not expressly ask the state to assist religious communities in matters of faith or to remain neutral towards religious affairs, it does mandate that there be no discrimination between individuals based solely on religion. The state legislature, executive branch, and judiciary have taken active interest in religious affairs

⁸ Mahmood T, "Religion and the Secular State" (International center for Law and Religion Studies 2010) <https://classic.iclrs.org/content/blurb/files/Religion%20and%20the%20Secular%20State%20-%20Interim%20Reports%202010.07.27.pdf>

⁹ Secularism Under Siege https://books.google.co.in/books?id=zvnZEAAAQBAI&redir_esc=y accessed June 29, 2024

¹⁰ The Constitution of India, 1950

in a way that would be unthinkable in a strictly secular political system. Silence of the constitution on these matters would be a tacit approval of state intervention in religious matters. [Article 27]

X. JUDICIAL INTERPRETATION OF SECULARISM:

The judiciary has in several cases interpreted constitutional provisions relating to religious freedom to lay down its parameters and boundaries. A distinction has been made between "essential" and "non-essential" practices of religion, holding that the Constitution necessarily protects only the former. In many cases, the judiciary has looked into religious beliefs to determine if an allegedly religious practice is "essential" or not, while nowhere does the Constitution say or even suggest that religion is to be the foundation or source of state law. Nor is there such a provision for religion in any legislative enactment¹¹.

The apex court in the landmark *S.R. Bommai vs. Union of India*¹² case made this observation: "In a secular polity like ours, mingling of religion with politics is unconstitutional, in other words, a flagrant breach of the constitutional features of secular democracy. It is therefore imperative that religion and caste should not be introduced into politics by any political party, association, or individual, and it is imperative to prevent religious and caste pollution of politics. If a political party espousing a particular religion comes to power, that religion tends to become, in practice, the official religion. All other religions come to acquire a secondary status, at any rate, a less favorable position. This would be plainly antithetical to the entire constitutional scheme."¹³

Also, rights under articles 25 and 26 are not absolute in nature. The rights to religion guaranteed under Article 25 or 26 are not absolute or unfettered rights, they are subject

¹¹ *Secularism Under Siege* https://books.google.co.in/books?id=zvnZEAAAQBAJ&redir_esc=y accessed June 29, 2024

¹² AIR 1994 SC 1918

¹³ Mahapatra D, "Bhindranwale to Ram Rahim: India Singed by Cocktail of Politics and Religion" *Times Of India* (August 28, 2017) <<https://timesofindia.indiatimes.com/india/bhindranwale-to-ram-rahim-india-singed-by-cocktail-of-politics-and-religion/articleshow/60251116.cms>> accessed June 29, 2024

to reform on social welfare by appropriate legislation by the state. The court therefore, while interpreting Articles 25 and 26, strikes a careful balance between matters that are essential and integral parts and those that are not, and the need for the state to regulate or control in the interest of the community ¹⁴[A.S. Narayan].

In order to decide the matters relating to religious practices, the Supreme Court has introduced the essential feature doctrine in the *Commissioner, Hindu Religious Endowments of Madras vs. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt Case*¹⁵ that every religion has some basic essential practices without which the religion will lose its identity. The court held that interference to such practices would amount to an infringement of religious right. Following this doctrine court has resolved any such issues as described below.

In 2022, a dispute arose regarding the wearing of hijab for Muslim girl students in school. The Karnataka High Court applying the essential element doctrine held that the wearing of hijab is not an essential practice in Islam. However, an appeal is still pending with the Supreme Court. On the other hand in the case of *Indian Young Lawyers Association vs. State of Kerala*¹⁶ the Court held the prohibition of entry of women of menstruating age as discriminatory and allowed them to enter to the temple. Also in the landmark case of *Shayara Bano vs. Union of India*¹⁷ the apex court abolished the age old practice of triple talak and held it as not essential practices of Islam.

Thus, time and again, the judiciary has tested its commitment to uphold constitutional values and secularism.

XI. SOURCES OF RELIGIOUS DISHARMONY:

Religious disharmony in Indian society can be attributed to the diversity and historical factors described below.

¹⁴ 1996 9 SCC 548

¹⁵ AIR 1954 SC 282

¹⁶ AIR ONLINE 2018 SC 243

¹⁷ AIR 2017 SC 4609

- 1. Role of the British Empire:** The British, initially arriving as traders, ultimately established themselves as colonial masters. Prior to their arrival, India was a land of feudal lords living in relative peace. Recognizing the strong role of religion, the British exploited it to divide the people. This "*divide and rule*" policy, implemented after the failure of the First War of Independence (1857), when Hindus and Muslims united, aimed to weaken resistance by fostering religious and caste-based identity politics.
- 2. Nature of the Freedom Struggle:** Initially welcomed by Indians, the British gradually eroded their cultural and traditional practices. This led to the 1857 rebellion, a joint Hindu-Muslim uprising. However, its suppression by the British and subsequent massacre of about 40,000 Muslims in Delhi marked a turning point. From then on, the British sought to cultivate Muslim support, encouraging landlordism and modern education among young Muslims to further divide Indian society. They also played on caste differences, pitting Brahmins against non-Brahmins, and funded communalist writers to spread their ideologies through newspapers and literature.
- 3. Hypocrisy in the Constitution:** Citizens of India, including the minority, enjoy fundamental rights. Articles 25, 29, and 30 protect the cultural, educational, and religious rights of minorities. However, these rights have sometimes been used to justify personal laws within communities, leading to friction with the majority. The Shah Bano controversy in 1986 exemplified this tension, highlighting the potential for minority rights to be perceived as conflicting with majority interests. This, in turn, fuels calls for a uniform civil code, further deepening the divide.
- 4. Socio-Economic Inequity and Class Conflicts:** Competition for resources and socioeconomic opportunities can also exacerbate communal tensions. Some scholars argue that India's communalism is rooted in class conflicts, with the upper classes exploiting the lower classes and generating resentment and prejudice. This clash of needs and interests between communities can often erupt

into violence, as seen in the claims by some Muslims of continued exploitation by the Hindu majority after partition.

5. **Political Competition:** India's lively democratic system also offers a rich environment for political figures to leverage communal feelings for their benefit. By using provocative language, referencing historical disputes, and playing on religious identities, politicians can heighten communal conflicts and even provoke acts of violence.¹⁸
6. **Role of Media:** The media, instead of promoting factual reporting and understanding, often contributes to the spread of communal narratives. After Partition, the media also continued to broadcast various controversial issues in which Hindus cast Muslims and Muslims cast Hindus. There was much controversy remained on issues like uniform civil code, Shah Bano case, Salamn Rushdie's book *The Satanic Verses*, the issues of Triple Talaq, Ameena Arab Marriages. Besides these, the news of some other communal riots also sharpened the division between Hindus and Muslims. The printing presses of both groups reflected the perspectives of their respective communities, yet in the process, they distorted the truth and fostered a prejudiced atmosphere within the communities.¹⁹

XII. IMPACTS OF RELIGIOUS DISHARMONY:

Religious disharmony often leads to obstructions to the growth of the country. It fosters suspicion and animosity between the people of communities and undermines trust and harmony. Such an environment hinders investment and has economic repercussions. The radicalization of youth often causes violence and a threat to national security. Such

¹⁸ "Global Report" (IDEA Global State of Democracy Report) <https://www.idea.int/gsod-2021/global-report> accessed June 29, 2024

¹⁹Babu H, "What Are the Effects of Communalism on India Politics?" (PreserveArticles.com: Preserving Your Articles for Eternity, January 16, 2012) <https://www.preservearticles.com/articles/what-are-the-effects-of-communalism-on-india-politics/18644> accessed June 28, 2024

tensions paint a bad image, impacting the soft power of the country on a global stage. Few major instances of such communal violence are being described here, which caused economic and human loss.

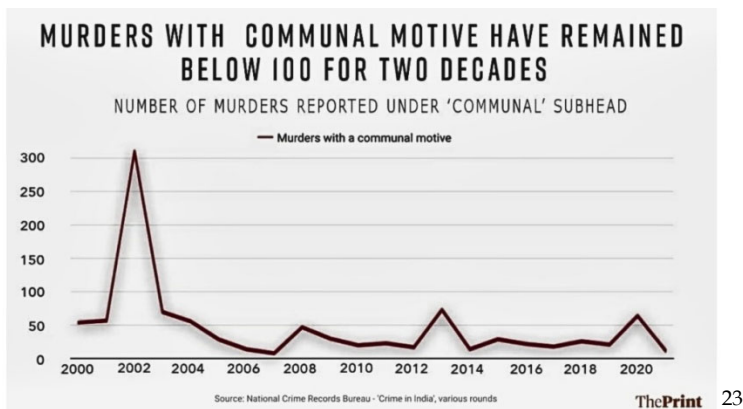
- 1. Anti-Sikh riots, 1984:** Violence against Sikhs was witnessed in various states of India, mainly in Delhi. The Sikhs were killed in large numbers by anti-Sikh mobs due to the assassination of the former Prime Minister Indira Gandhi by her Sikh bodyguard in response to the military operation authorization given by Indira Gandhi. Official Indian government reports gave in the stats that about 2,800 Sikhs were killed, 2100 were killed in Delhi, but the independent reports stated that around 8,000 people were killed and 5,000 were killed in Delhi itself²⁰.
- 2. Babri Masjid Demolition in Ayodhya, 1992:** According to Hindus, Ayodhya is the birthplace of Lord Rama, and it is a sacred place for Hindus. But during the 16th century, Mughal general Mir Baqi, built a mosque, named after Mughal ruler Babur. There have been disputes since then. But in 1990, due to some political pampering and fueling, there was a protest by Hindu religious groups, and on a large scale, “karsevak” visited Ayodhya from all parts of India, with a common point of view of demolishing the Babri masjid and building the Ram temple there. These movements caused a huge number of deaths, estimated at around 2,000 people. Violence did not stop here, the Godhra incident in 2002, when “karsevak” returning from Ayodhya in a Sabarmati Express were killed by fire in the coaches of the train. This act extended communal violence in Gujarat. That violence is like a black spot in the history of the nation, as people were killed without any mercy. The Hindu and Muslim communities became hostile to each other.²¹
- 3. Dadri Lynching, 2015:** In September, 2015, a mob attacked a 52-year-old Muslim man called Akhlaq, and his son Danish, accused of selling beef. Akhlaq was beaten to

²⁰ “BBC NEWS” (BBC) <http://news.bbc.co.uk/2/hi/south_asia/8306420.stm> accessed June 28, 2024

²¹ Anushka, “Communal Riots in India: Key Incidents and Trends” (GKToday, December 6, 2017) <<https://www.gktoday.in/communal-riots-in-India-key-incidents-and-trends/>> accessed June 28, 2024

death, and Danish was severely injured in the attack. This incident in Uttar Pradesh's Bisara village was the first case of a Muslim who got lynched by a Hindu mob in the name of cow and beef.²²

Besides these, many incidents of such communal violence can be witnessed during religious celebrations.



XIII. STEPS TAKEN BY THE STATE

The state has taken many steps from time to time in order to curb communalism. Various committees have been set up from time to time by different governments to advise on the matter and lay down measures for curbing the spread of communalism. One such body is the, National Human Rights Commission (NHRC) in India, which struggles for the rights of the victims, but its recommendations are advisory in nature, and therefore have no significant outcome.

Some of the prominent committees that worked on this issue, were the Sachar committee, the Nanavati committee and the Ranganath Mishra Commission.

1. Nanavati-Mehta Commission: It was set up by the Gujarat government in 2002 to inquire into the facts, circumstances, and course of events of the incidents that led to the

²² Surendran V, "Politics of Lynching, the New Normal in India" *India Today* (June 27, 2017) <<https://www.Indiatoday.in/fyi/story/lynching-hindu-muslim-mob-violence-kashmir-jharkhand-984791-2017-06-27>> accessed June 28, 2024

²³ Rampal N, "Have Communal Killings Gone up or down? NCRB Data Show 12% Fall in Toll from 2006-13 to 2014-21" *theprint* (August 10, 2023) <<https://theprint.in/india/have-communal-killings-gone-up-or-down-ncrb-data-show-12-fall-in-toll-from-2006-13-to-2014-21/1707687/>> accessed June 30, 2024

setting up on fire, some coaches of the Sabarmati Express Train on February 27, 2002 near the Godhra Railway Station and the subsequent incidents of violence in the state in the aftermath of the Godhra incident that took place in the state of Gujarat²⁴.

2. Sachar Committee: It was later appointed in 2005. This committee recommended setting up an Equal Opportunity Commission (EOC) in 2010. The EOC was supposed to setup a grievance redressal mechanism for all individual cases of discrimination based on religion, caste, gender, & physical ability, among others.²⁵

3. Ranganath Mishra Commission: also known as the National Commission for Religious and Linguistic Minorities, was set up on October 29, 2004. It was entrusted by the government to suggest practical measures for the upliftment of the socially and economically underdeveloped and backward sections among religious and linguistic minorities. The commission was also asked to include the modalities for implementation of the same. The report of the commission headed by former Chief Justice of India Ranganath Mishra, said that 10% should be reserved for Muslims and 5% for other minorities in central and state government jobs in all cadres and grades, and further recommended 8.4% out of the existing OBC quota of 27% for minorities.²⁶

The main purpose of all the above-mentioned committees was to give recommendations to find out the causes of the backwardness of minorities and the steps required to improve their conditions.

Though the grip of communal violence over Indian society is increasing day by day until now, other than some provisions under Indian criminal laws, there are no other firm laws drafted to punish the originators of such violence, no clear policies for relief and rehabilitation of the communal violent attack survivors. There have been two bills in this regard that were drafted but could not be framed as governing legislation. These are:

²⁴ Nanavati GT Mr justice and Mehta A Mr Justice, "Report by the Commission of Inquiry" (2018) <http://www.sacw.net/DC/CommunalismCollection/ArticlesArchive/NanavatiReport1.pdf>

²⁵ <https://www.minorityaffairs.gov.in/WriteReadData/RTF1984/7830578798.pdf> accessed June 29, 2024

²⁶ Misra R Justice, "Report of Justice Ranganath Misra Commission of Inquiry"

1. The Communal Violence (Prevention, Control, and Rehabilitation of Victims)

Bill, 2005: Was first laid down in the year 2005 by the Congress as per the promise made by them while seeking electoral victory in the previous year. It defined “communal and targeted violence” as and includes any act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person or property, knowingly directed against any person by virtue of his or her membership in any group, which destroys the secular fabric of the nation, This bill allowed the state government to notify an area as a communally disturbed one, and it further doubled the punishment for certain crimes in such areas. The state government had the power to declare an area as a ‘communally disturbed’ one, under certain conditions. The district magistrate or the competent authority appointed by the state government could also take measures such as regulating assembly, directing persons to deposit their arms, searching premises, etc. to control communal violence. This bill mainly provided for (a) prevention and control of communal violence, (b) formation of special courts for the speedy investigation and trials, and (c) formation of Communal Disturbance Relief and Rehabilitation Councils at the national, state, and district levels for the rehabilitation of victims. This bill was strongly opposed by the civil society since it provided for the act to be applicable only if an area was declared as ‘disturbed’, which left too much discretion at the hands of politicians. Hence, the bill was abandoned.

2. Prevention of Communal and Targeted Violence (Access to Justice and

Reparations) Bill’, 2011: The National Advisory Council (NAC) was set up by the UPA Government, which includes the members of civil society. The NAC then drafted the ‘Prevention of Community and Targeted Violence (Access to Justice and Reparations) Bill’, in 2010. But the civil society again, had innumerable suggestions and consultations to it, and Sangh Parivar had even declared it anti-Hindu. In 2011, the NAC made 49 amendments to the earlier draft and resubmitted the bill for reconsideration. However, it still lapsed in the parliament.

The 2011 bill provided for a seven-member national authority for communal harmony, justice, and reparations, contained provisions for ensuring accountability of the district administration, and also attempted at safeguarding the minority sections. Some of these measures had already been recommended by the Sachar committee and Ranganath Mishra Commission. This bill consisted of 138 sections, and the key features and highlights were the same as those of the 2005 bill. None of these bills could be passed by the Indian Legislature and become laws.

XIV. CONCLUDING REMARKS:

In India, we have religious-cultural pluralism. So, it is the birthplace of some, and the adopted home of others faith traditions. Indian culture means a heterogeneous society of different religions like Muslims, Christians, Parsis, Jews, and others. On the other hand, the state of India is secular, but the society is deeply religious.

The present research paper in *Summing Up Now* says last-Wound that India is the epicenter of respect and love for all. Ancient religious scriptures tell us "athithi devo bhava" Guest is God- and so we do love our guests.

Having said this now, the present research, Some suggestions will be highlighted as follows to minimize the present problems to some extent:

1. There is no law in the country placing any restrictions on mixing of religion with politics. Several religious-political organizations either directly contest general elections on sponsor or promote such parties. In a secular polity like ours mingling of religion, with politics is unconstitutional. Any election, on the basis of religion and caste would be unconstitutional.
2. Uniform civil code should be formulated and implemented with the consensus of all religious communities so that there is uniformity in personal laws. Feelings of nationalism should be developed in the minds of citizens by reminding them about

the glorious history in which Hindus, Muslims, and Sikhs were combined to safeguard the interest of the country.

3. Secular education should be taught in all educational institutions, which will lead to the development of harmony and cooperation among members of different communities.
4. There should be an increase in employment opportunities for the minorities, focusing on increasing skill through various programs and initiatives.
5. Swift and prompt responses to radicalization by a militant group on social media through police action, counseling sessions for those radicalized, especially adolescents, etc should be made.

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