

Responding to “Stealth Theocracy”: Propositions for India’s Civil Courts

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I. INTRODUCTION

With just approximately two months before the Indian general election results are released, various organizations have begun to carry out opinion polls to better gauge the voting intentions in India. Based on major Indian media outlets’ analyses of these polls, it seems likely that Narendra Modi will be re-elected as Prime Minister, and his party’s (Bharatiya Janata Party (BJP)) coalition, the National Democratic Alliance (NDA), will continue to have the greatest number of seats among all political alliances in the Lok Sabha (lower house of the Parliament of India).¹ Such pro-Modi forecasts are well in-line with recent findings of extensive research. According to the Pew Research Center’s Spring 2017 Global Attitudes Survey, for example, approximately nine-in-ten Indians hold a favorable view of Narendra Modi (including sixty-nine percent who hold a *very* favorable opinion); at least seven-in-ten approve of how he has helped the poor and handled unemployment, terrorism, and corruption; and more than eight-in-ten say economic conditions in India are good.²

Given that Narendra Modi has received positive feedback on how he has handled so many of India’s core issues, it may come as a surprise that the aforementioned Pew Research Center Survey found that only fifty percent of Indians approve of the way that he has handled communal relations, specifically the tensions between Muslims and Hindus and among India’s various castes.³ This

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1. See, e.g., *With BJP at 238, NDA predicted to win 285 seats in 2019 Lok Sabha election: India TV-CNX Opinion poll*, INDIA TV (Mar. 10, 2019), <https://www.indiatvnews.com/elections/lok-sabha-elections-2019-with-bjp-at-238-nda-predicted-to-win-285-seats-in-2019-lok-sabha-election-india-tv-cnx-opinion-poll-508403> [<https://perma.cc/9J6H-GKEC>]; *Lok Sabha elections 2019 / Modi govt to retain power at Centre, NDA likely to win 270 seats: Opinion poll*, NEWS NATION BUREAU (Mar. 12, 2019), <https://www.newsnation.in/election/lok-sabha-election-2019/lok-sabha-elections-2019-modi-govt-to-retain-power-at-centre-nda-likely-to-win-270-seats-opinion-poll-article-216709.html> [<https://perma.cc/EK5V-GU5N>]; *NDA will marginally fall short of majority but form government: Cvoter survey*, THE TIMES OF INDIA (Mar. 10, 2019), <https://timesofindia.indiatimes.com/india/nda-will-marginally-fall-short-of-majority-but-form-government-cvoter-survey/articleshow/68347499.cms> [<https://perma.cc/PF7C-K7VJ>].

2. Bruce Stokes, Dorothy Manevich & Hanyu Chwe, *Three Years In, Modi Remains Very Popular*, PEW RESEARCH CENTER, Nov. 15, 2017, at 6-7, 10.

3. *Id.* at 12.

divide is further exemplified by the fact that only fifty-five percent of his own party's supporters approve of the way that Modi has handled communal relations.⁴ Such relatively low approval ratings, however, are unlikely to deter Modi from gaining the electoral support needed to keep his position as Prime Minister, given that relatively few Indians (thirty-seven percent) see communal relations as a very big problem.⁵ As a matter of fact, the Survey even identified twelve other domestic issues that greater percentages of Indians perceive to be very big problems, the top three being crime (eighty-four percent), terrorism (seventy-six percent), and corrupt officials (seventy-four percent).⁶

Notwithstanding the lack of urgency associated with alleviating social tensions, further research into communal relations shows that it is an issue that cannot be ignored. As of 2016, social hostilities in India involving religion, whether they are between individuals, social groups, and even governments, have been gradually increasing, as shown by India having received the highest score on the Pew Research Center's Social Hostilities Index that year.⁷ As this note will demonstrate through empirical, theoretical, and constitutional evidence, this trend is likely to continue increasing if it is not actively addressed.

The religious tensions that this note will address relate to those not only between majority and minority communities but also between minority communities within majority communities. In the context of India, the most widely-covered stories related to religious tensions involve Hindus, who represent approximately eighty percent of India's population, and Muslims, who comprise a little less than fifteen percent of the population.⁸ While conflicts between and within these religious groups have been prevalent ever since India's independence, they have become more intertwined with the nation's political and judicial systems as the decades have passed. As a result, politicians and judges have inevitably had to grapple with addressing religious conflicts, despite the fact that the Preamble to India's Constitution establishes India's status as a secular nation.

Delving more deeply into India's current climate, as it relates to religious conflict, this four-part note will (1) explore the role that India's legislative and judicial entities have played in the evolution of religious tensions; (2) argue that these tensions are a natural result of "stealth theocracy," a phenomenon that occurs when religion and politics become intertwined through the engagement of judicial and political actors, rather than through formal mechanisms of constitutional modifications; (3) suggest that India's civil courts, instead of its legislative entities, are best positioned and should be relied upon the most to resolve conflicts stemming from

4. *Id.*

5. *Id.* at 21.

6. *Id.*

7. Katayoun Kishi, *Global Uptick in Government Restrictions on Religion in 2016*, PEW RESEARCH CENTER, June 21, 2018, at 58.

8. *Religion Census 2011*, CENSUS 2011, <https://www.census2011.co.in/religion.php>. [<https://perma.cc/EKE4-UAH3>].

“stealth theocracy”; and (4) propose solutions to not only alleviate religious tensions but also bridge the gap between those who prefer that the civil courts refrain from addressing religious matters and those who would like to see the courts take a hands-on approach in interpreting the constitutionality of religious customs.

In particular, the three solutions that will be proposed for India’s civil courts to consider pursuing in order to counteract the negative effects of “stealth theocracy” are (1) working with government officials and religious groups to modify personal laws that have adversely impacted marginalized communities, (2) strengthening reservation programs, and (3) allowing qualified individuals to obtain exemptions from certain laws that clash with their religious beliefs, assuming those exemptions do not cause significant harm to third-parties.

II. EXPLORATION OF RELIGIOUS TENSIONS IN INDIA

A. ROOTS OF THE TENSION: THE BJP’S RISE THROUGH HINDU NATIONALISM

1. THE PRE-BJP ERA

India’s current Prime Minister, Narendra Modi, represents the Bharatiya Janata Party (BJP), the country’s largest party.⁹ Despite its dominant presence, the BJP’s role in Indian politics has not always been in the foreground. As recently as the 1984 general elections, the BJP won only two seats in the Lok Sabha.¹⁰ The first BJP-affiliated Prime Minister did not even serve in that position until the second half of the 1990s, and Modi is just the second ever Indian Prime Minister to be a representative of the BJP.¹¹ Such a recent increase in the BJP’s representation within the Parliament symbolizes the growth in popularity of the party’s ideals.

The BJP traces its roots from the Bharatiya Jana Sangh (BJS), which was a political wing of the right-wing Hindu nationalist group Rashtriya Swayamsevak Sangh (RSS).¹² Formed in 1951, the BJS denounced the then-ruling Indian National Congress’s (INC) intense advocacy for secular policies and equated Hindu nationalism with Indian nationalism.¹³ The problem with this strategy was that it created difficulties for the BJS to not only differentiate itself from the INC, which also promoted nationalism, but also maintain enough support from the RSS, whose Hindu nationalist views conflicted with the relatively more national platform of the BJS.¹⁴ The effects of this predicament were represented by the

9. Satish Misra, *Understanding the Rise of the Bharatiya Janata Party*, OBSERVER RESEARCH FOUNDATION (ORF) ISSUE BRIEF, Sept. 2018, at 1, 1.

10. *Id.*

11. *Id.* at 2.

12. Yoosuk Kim, *Indian Electoral Politics and the Rise of the Bharatiya Janata Party (BJP)*, FLORIDA STATE UNIVERSITY LIBRARIES, 2006, at 1, 6-7.

13. *Id.* at 6.

14. *Id.* at 7.

BJS's inability to retain its position of governmental power for a substantial period of time.¹⁵ Even though the BJS succeeded in joining other parties to form the Janata Party coalition and defeating the INC in the 1977 general election, it also contributed to the immediate downfall of the Janata coalition, as controversy arose over the dual loyalty of the BJS members to both the Janata coalition and the RSS.¹⁶

2. THE BJP'S BIRTH AND EARLY DAYS

With the eventual break-up of the Janata coalition, the INC came back into power in 1980.¹⁷ In response, leaders of both the BJS and RSS came together to form the BJP, whose main goal at the time was to steer away from the earlier mistakes of the BJS and offer a more watered-down version of Hindu nationalism.¹⁸ For example, former BJP president Lal Krishna Advani claimed that *hindutva* ("Hindu-ness") referred to the preference of Indian culture over westernization, instead of a Hindu theocratic state.¹⁹ With this sort of mindset guiding the party, the BJP adopted five commitments: (1) nationalism, (2) national integration, (3) democracy, (4) positive secularism, and (5) value-based politics.²⁰

Pointing out the disparities between the BJP's initial stances and the eventual realities of the party's objectives, scholars and political analysts have characterized Advani's actual execution of *hindutva* as an attempt to redefine India as a Hindu country to the exclusion of other religions, given that he directed the BJP in forming alliances with militant Hindu nationalist groups in order to mobilize Hindu voters.²¹ A few specific examples of the BJP's continued employment of *hindutva* during and after Advani's presidency from the 1990s until present day include the BJP's support in the campaign to construct a Hindu temple at the exact site of a mosque located in Ayodhya, which is believed to be the birthplace of the Hindu deity Rama;²² the tendencies to refer to Hindu migrants from Bangladesh as "refugees" but refer to Muslim migrants from the same country as "illegal";²³ and the interest that BJP chief ministers have shown toward adopting anti-conversion laws criminalizing religious conversion without the government's consent.²⁴

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 7-8.

19. Yogendra K. Malik & V.B. Singh, *Bharatiya Janata Party: An Alternative to the Congress (I)?*, 32 ASIAN SURVEY, 318, 324 (1992).

20. Kim, *supra* note 12.

21. Malik & Singh, *supra* note 19, at 324-325.

22. *Id.* at 329.

23. Atique Ur Rahman, *The Political Transformation in India*, 33 SELCUK U. J. INST. SOC. SCIS. 107, 110 (2015).

24. K. ALAN KRONSTADT, INDIA: RELIGIOUS FREEDOM ISSUES 15-16 (Congressional Research Service, 2018).

3. THE BJP’S RECENT DOMINANCE

In the 2014 general election, the BJP and its allies won 336 out of the 543 seats in the Lok Sabha, marking the election of India’s largest majority government since 1984, and it handed the INC the worst ever anti-incumbency defeat in a general election.²⁵ Even though the BJP garnered support by promising job growth, rapid economic development, and a fight against corruption, some of the rhetoric that was being portrayed throughout the campaign was related to the promotion of *hindutva*. For instance, when engaging with Hindu groups, Narendra Modi associated himself with Hindu symbols and personalities.²⁶ Aside from wearing saffron clothes during very important occasions of his election campaign, Modi visited many sacred Hindu sites before his meetings, especially caves and temples that served as significant places of worship to Hindu deities.²⁷ On some occasions, when delivering speeches within contested, crucial regions of the country, Modi made passionate pro-Hindu statements that were of large appeal to devout practitioners of the religion.²⁸

B. ONE OF MANY: MAKING SENSE OF THE BJP’S RISE VIA AN INTERNATIONAL PERSPECTIVE ON RELIGION

1. RELIGION’S “FIRST-MOVER ADVANTAGE”

Through the lens of world history, specifically patterns related to religion, it should not come as a surprise that the BJP’s Hindu nationalist origins ended up being the driving force behind the party’s rise to power and Narendra Modi’s victory in 2014. In the pre-modern era, religion, law, and politics were closely intertwined.²⁹ Even though the modern era saw the emergence of the separation of church and state, this separation never really became fully refined, as there now exists a strong echo of religion even in secular societies.³⁰ With the “first-mover advantage,” religion, more so than secular constitutionalism, addresses the human need for belonging, meaning, or guidance,³¹ which explains the recent reintroduction of religion-based boundaries into politics in countries all over the world.³²

25. *Election results 2014: India places its faith in Moditva*, THE TIMES OF INDIA (May 17, 2014), <https://timesofindia.indiatimes.com/news/Election-results-2014-India-places-its-faith-in-Moditva/articleshow/35224486.cms> [<https://perma.cc/AG7W-U3M9>].

26. Christophe Jaffrelot, *The Modi-centric BJP 2014 election campaign: new techniques and old tactics*, 23 CONTEMPORARY SOUTH ASIA 151, 160 (2015).

27. *Id.*

28. *Id.*

29. Ran Hirschl & Ayelet Shachar, *Competing Orders? The Challenge of Religion to Modern Constitutionalism*, 85 U. CHI. L. REV. 425, 428 (2018).

30. *Id.* at 430.

31. *Id.* at 430, 433.

32. *Id.* at 440.

2. REAL-WORD EXAMPLES OF RELIGIO-NATIONALISM

A few instances in which today's political leaders have joined this movement, some of which have been in constitutionally-secular states, include United States President Donald Trump's anti-Islam rhetoric, Russia President Vladimir Putin's close relationship to the Orthodox Church, Israel Prime Minister Benjamin Netanyahu's aim to bolster Israel's Jewish character and limit its democratic character, Turkey President Recep Tayyip Erdogan's advancement of an illiberal faith-based constitutional agenda after more than eighty years of militant secularism, etc.³³ In almost all of these settings, the wave of religion-infused political rhetoric has impacted the composition of higher courts through the appointment of conservative judges known for their "us first" attitudes and opposition to global constitutionalist values, as these judges not only are sympathetic to religio-nationalist interests on issues like sovereignty, citizenship, and immigration but also are rapidly diminishing their respect for pluralism, minority rights, and civil liberties.³⁴

III. PUTTING A NAME TO IT: "STEALTH THEOCRACY"

A. WHAT IS "STEALTH THEOCRACY?"

These cases where religion and politics are becoming more intertwined through the engagement of judicial and political actors, rather than through formal mechanisms of constitutional modifications, are an example of what Professor Yvonne Tew calls "stealth theocracy," a phenomenon that involves the fundamental alteration of a constitutional system's religious or secular character through less visible means of constitutional change.³⁵ Professor Tew demonstrates the notion of "stealth theocracy" by examining Malaysia, where the politicization of religion, fueled by its intimate connection to ethnic identity and nationalism, has shifted the contemporary state from its secular foundations to an increasingly religious public order, leading to the rise of Islamization over the past quarter-century.³⁶

B. POLITICAL AND JUDICIAL INFLUENCES ON MALAYSIA'S "STEALTH THEOCRACY"

1. POLITICAL INFLUENCES

Political actors's influences on Malaysia's "stealthy" alterations of its secular character may be exhibited in the rhetoric used by leaders of governmental entities, who have increasingly come to publicly endorse Islam. Statements coming out of the political community have included those from two-time Prime Minister

33. *Id.* at 440-441.

34. *Id.* at 441.

35. Yvonne Tew, *Stealth Theocracy*, 58 VA. J. INT'L L. 31, 33 (2018).

36. *Id.* at 34.

Mahathir Mohamad, who in 2001 said that his party, the United Malays National Organisation (UMNO), “. . . wishes to state clearly that Malaysia is an Islamic State,” former Prime Minister Najib Tun Razak, who in 2007, in his capacity as Deputy Prime Minister, said that “Islam is our official religion and we are an Islamic state,” and even some of Razak’s government ministers, who as recently as 2017 emphasized the *Barisan Nasional* coalition’s commitment to an Islamic agenda.³⁷

2. JUDICIAL INFLUENCES

Such pro-Islam rhetoric even extends to judiciary bodies. At the level of the Malaysian High Courts, for example, it has been declared that “A Malay . . . remains in Islamic faith until his or her dying days.”³⁸ The grassroots effects of this sort of sentiment may be illustrated from Malaysian civil courts’s decisions to expand Islam’s scope and reach via (1) deferring matters related to religious freedom to Sharia courts and (2) expanding the interpretation of the Article 3(1) Islamic constitutional clause,³⁹ which declares that “Islam is the religion of the Federation; but other religions may be practiced in peace and harmony.”⁴⁰ Contentious matters that have been impacted by the courts’s favorable attitudes toward Islamization have impacted issues ranging from apostasy,⁴¹ child conversion and custody,⁴² and the freedom to express Muslim terms in non-Muslim settings.⁴³ Specific cases include *Lina Joy*, whose decision prevents a Muslim from leaving Islam without obtaining authorization from the Sharia court;⁴⁴ *Indira Gandhi*, which experienced back-and-forth deliberation on the constitutionality of unilateral conversion of a child;⁴⁵ and the *Allah* case, which banned the use of the term “Allah” in reference to God by non-Muslim publications.⁴⁶

C. APPLICATION TO INDIA

1. CONSTITUTIONAL ROOTS OF INDIA’S “STEALTH THEOCRACY:” BASIC STRUCTURE DOCTRINE

Keeping in mind the incremental yet transformative rise of “stealth theocracy” in Malaysia, one may use constitutional analyses to conclude that the potential for it to not only exist but also make a significant impact in India is at least as great as it is in Malaysia. While formally amending the Malaysian Constitution is

37. *Id.* at 47-48.

38. *Id.* at 64.

39. *Id.* at 35.

40. *Id.* at 44.

41. *Id.* at 51.

42. *Id.* at 55.

43. *Id.* at 59-60.

44. *Id.* at 51-54.

45. *Id.* at 55-57.

46. *Id.* at 59-60.

relatively easy compared to many other constitutional systems,⁴⁷ India has placed strict restrictions on amending some parts of its Constitution, specifically on subjects related to its basic structure.⁴⁸ As explained by the Indian Supreme Court in the 1973 case *Kesavananda Bharati Sripadagalvaru v. Kerala*, the Indian Constitution's basic structure includes certain principles and values related to constitutional supremacy, the republican and democratic forms of government, the separation of powers, federalism, and the secular character of the state.⁴⁹ By establishing that "every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same," the *Kesavananda Bharati* Court informally entrenched secularism as an unamendable value, as secularism was deemed to be a central feature of the Indian Constitution's basic structure.⁵⁰ The Supreme Court itself has gone so far as to say that secularism is "the soul of the Constitution."⁵¹

As a result of the unamendability that India's Supreme Court has placed on its Constitution's basic structure, the nation's citizens and politicians have been denied the ability to check the courts's own power to interpret the Constitution's formal provisions and informal norms on matters related to secularism.⁵² Indian judges themselves have declared that the "people's constitution" cannot be changed (not even by the people themselves) to align with Indian citizens's current views.⁵³ That being said, by establishing the "basic structure doctrine" in *Kesavananda Bharati Sripadagalvaru v. Kerala*, the Indian Supreme Court widened the gates for "stealth theocracy" to persist in the public discourse, given that fundamental alterations of India's secular character could not legally be rectified through constitutional amendments.

2. DEFINING INDIA'S VERSION OF "STEALTH THEOCRACY"

The constitutional theory has been backed by historical evidence, as India has witnessed an evolution of its own "stealth theocracy" throughout the twentieth and twenty-first centuries. Despite the fact that the character of secularism has not been directly altered via constitutional amendments, it very much has been altered and even challenged through decisions made by India's political and judicial entities, leading to tensions between Hindu and minority religious groups, as well as minority groups within the Hindu community. In analyzing the manner in which secular interests have been polarized with religious interests, one can see that the resulting tensions that have arisen in India are rooted from a variety of

47. *Id.* at 46.

48. Richard Albert & Yaniv Roznai, *Religion, Secularism and Limitations on Constitutional Amendment*, in EDWARD ELGAR RESEARCH HANDBOOK ON LAW & RELIGION 154, 170 (Rex Ahdar ed. 2018).

49. *Id.*

50. *Id.* at 170-171.

51. *Id.* at 171.

52. *Id.* at 172.

53. *Id.* at 171-172.

factors, including political parties’s use of religion to gain support within a multi-party system and the government’s ability to garner support through religious-oriented initiatives.

Before interpreting specific instances of religious tensions in India, it may be worth noting the distinct factors that have made the changing character of secularism there so “stealthy,” as doing so could prepare one to pinpoint the specific causes of conflict among various religious communities and formulate solutions to alleviate them. While India’s version of “stealth theocracy” is similar to Malaysia’s in that alterations of its secular character have happened without constitutional amendments, India is unique in that its political and judicial actors possess considerable amounts of variation in their opinions, statements, and legislative or jurisdictional tendencies on matters related to secularism.

At first glance, especially for those who do not experience the day-to-day affairs of Indian life, it may be easy to blame only high-standing members of the federal government and higher civil courts for causing religious tensions, not only because those people naturally receive the most media attention but also because those in similar positions abroad have significantly contributed to forming “stealth theocracies” in their respective countries, such as Indonesia,⁵⁴ Sri Lanka,⁵⁵ and Turkey.⁵⁶ But upon further examination, one may come to see that much of India’s gradual transformation from secular to theocratic can be attributed to entities outside of the federal government and highest levels of courts. As will be demonstrated, many of these groups have operated at grassroots, localized levels, signifying the “stealthy” manner in which India’s secular character has changed.

3. SPECIFIC EXAMPLES OF “STEALTH THEOCRACY” IN INDIA

a. RSS’s pro-BJP Campaign Efforts

When Narendra Modi was campaigning for the Prime Minister position, he garnered significant support from outside of the BJP, especially from the RSS, which has sustained its standing as a prominent right-wing Hindu nationalist group even today.⁵⁷ So direct are the RSS’s “pro-Hindu” stances that its mission statement asserts that “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.”⁵⁸ Leading up to the 2014 election, RSS volunteers spread themselves across the country to promote the BJP, as they believed that the party

54. Tew, *supra* note 35, at 71-74.

55. *Id.* at 74-77.

56. *Id.* at 77-79.

57. John Harriss, *Hindu Nationalism in Action: The Bharatiya Janata Party and Indian Politics*, 38 SOUTH ASIA: JOURNAL OF SOUTH ASIAN STUDIES 712, 713-714 (2015).

58. *Id.* at 713.

would be able to deliver on the RSS's long-standing key demands.⁵⁹ In particular, they took out processions in major cities including Varanasi, Allahabad, Kanpur, and Faizabad, organized door-to-door meetings in some localities of each district, and formed committees to work independently for BJP candidates.⁶⁰

It is worth noting that much of the RSS's efforts were not even under the direct supervision of the BJP. As explained by an RSS leader, election-related tensions between the BJP and RSS during the 1999 general elections led the latter to eventually distance itself from the former's electoral activities.⁶¹ In 2014 though, because it identified itself as "like-minded" as the BJP, the RSS decided that it would work "in the same direction" as the BJP.⁶² To maintain its distance though, the RSS would organize its campaigns without any coordination with the BJP's candidates.⁶³

That the RSS planned to promote Hindu nationalism and simultaneously support the BJP allowed Narendra Modi to secure Hindu votes without bearing the constant burden of connecting *hindutva* philosophy to his party's goals, as the RSS would do that for him. Although some of his actions on the campaign trail could be characterized as "pro-Hindu," as previously mentioned, Modi actually spent most of his time seeking to moderate his image by emphasizing his record of governance as chief minister of the industrial, powerhouse state of Gujarat.⁶⁴ For example, when giving speeches to Muslims, Modi boasted how Muslims in Gujarat were wealthier and better educated than their religious peers were in any other part of India.⁶⁵ In response, many of India's Muslim voters set aside their fears of Hindu supremacy and supported the man who was promising them jobs and economic revival.⁶⁶ The fact that Narendra Modi, who represented a Hindu nationalist party that had had a history of contentious relationships with Muslims, was able to garner relatively more support from Muslims than his party had done so in the past signified his and the BJP's ability to "stealthily" promote Hinduism

59. *Id.* at 714.

60. *RSS campaigns for Narendra Modi in UP to ensure maximum Lok Sabha seats*, INDIA TODAY (Apr. 5, 2014), <https://www.indiatoday.in/elections/highlights/story/rss-narendra-modi-2014-lok-sabha-polls-uttar-pradesh-hindu-year-187717-2014-04-05> [<https://perma.cc/3TRA-W77L>].

61. *Id.*

62. *Id.*

63. *Id.*

64. John Chalmers & Aditya Kalra, *Even in Muslim heartlands, India's Modi racks up gains*, REUTERS (May 16, 2014), <https://www.reuters.com/article/us-india-election-muslims/even-in-muslim-heartlands-indias-modi-racks-up-gains-idUSBREA4F0ET20140516> [<https://perma.cc/X54T-JESH>].

65. Zahir Janmohamed, *Modi is reaching out to India's Muslims – and they may vote for him*, THE GUARDIAN (Apr. 23, 2014), <https://www.theguardian.com/commentisfree/2014/apr/23/narendra-modi-reaching-out-india-muslim-vote> [<https://perma.cc/Q35Q-FEJ3>].

66. Chalmers & Kalra, *supra* note 64; see Shaswati Das, *Poll data shows large number of Muslims voted for Modi*, INDIA TODAY (May 18, 2014), <https://www.indiatoday.in/elections/highlights/story/delhi-muslims-muslim-voters-bjp-narendra-modi-delhi-lok-sabha-constituencies-harsh-varadhan-parvesh-singh-verma-ec-aap-193379-2014-05-18> [<https://perma.cc/Y7MY-3KXL>] ("The BJP won 45 of the 87 Lok Sabha seats identified by the Centre for the Study of Developing Societies (CSDS) as having a high concentration of Muslim voters").

so as to not only maintain the support of their base but also obtain the support of groups outside of the Hindu nationalist community.⁶⁷

b. Pro-Hindu School Curricula and Textbooks

Similar forms of “stealth theocracy,” where Hindu nationalist ideals have steadily spread through the work of the BJP’s allies and localized entities, have even presented themselves to schoolchildren. When Hindu nationalist organizations came into power at the national level in 1998, they established a National Curriculum Framework (NCF) in order to change the content of textbooks by introducing material that aligned with a Hindu nationalist agenda.⁶⁸ The curriculum designed by the NCF in 2000, along with the textbooks published a year later, replaced the earlier emphasis on science with the idea of a unique “Indian tradition” based on notions of spirituality and religion.⁶⁹

Additionally, grassroots organizations and educational institutions run by the RSS (*Saraswati Shishu Mandirs* and *Vidya Bharati* primary and secondary schools) spread a pro-Hindu version of history, as shown by elementary school books that portray all non-Hindus as foreigners, treat mythological figures as actual historical figures, and equate the struggle for freedom with a war against Muslims.⁷⁰ So harsh was this rhetoric and subject material that the US Department of State’s International Religious Freedom reports from 2002 to 2004 characterized some of the aforementioned efforts to revise the curriculum as threats to religious freedom.⁷¹ Even after the NCF curriculum on a national level was stayed by the Supreme Court in March of 2002, on the ground that the NCF had not sought mandatory approval of the Central Advisory Board of Education, states with BJP governments were already implementing changes to social science and history textbooks that followed the broad guidelines of the NCF 2000 curriculum.⁷²

c. Anti-Conversion Laws

Another illustration of India’s “stealthy” change in its secular character relates to anti-conversion laws, which require government officials to perform a legal review of conversions and provide for fines and imprisonment for anyone who uses force, fraud, or “inducement” to convert another citizen.⁷³ What makes these laws so “stealthy” is the fact that their impact has been consequential not through

67. See generally Das, *supra* note 66 (“Of the 102 constituencies where at least one in five voters is a Muslim, the BJP won 47 seats. In the last general election in 2009, the party had won only 24 of these seats”).

68. Kamala Visweswaran et al., *The Hindutva View of History: Rewriting Textbooks in India and the United States*, 10 GEO. J. INT’L AFF. 101, 103-104 (2009).

69. *Id.* at 104.

70. *Id.* at 103-104.

71. *Id.* at 104.

72. *Id.*

73. KRONSTADT, *supra* note 24, at 15.

broad legislation created by the federal government but rather through laws incrementally passed by state governments. Of India's twenty-nine states, eight have legislation restricting religious conversions, with laws in force in seven of them.⁷⁴ According to the US Commission on International Religious Freedom (USCIRF), these laws have created a hostile atmosphere for religious minorities.⁷⁵ For instance, Christians have experienced harassment and violent attacks in states that have adopted anti-conversion laws, as the government has perceived them to be partaking in proselytizing activities.⁷⁶ Some of this outdated sentiment by the government stems from pre-independence history, when British rulers made active Christian proselytization an integral part of its colonial project.⁷⁷ On the flip side, the anti-conversion laws have done nothing to prevent mass conversion to Hinduism, which is why Hindu activists have had very little trouble creating mass conversion camps where they "reconvert" hundreds of thousands of Christians and Muslims to Hinduism.⁷⁸

Ministers of the current BJP government at the parliamentary level have also voiced their support for the adoption of a nationwide anti-conversion law.⁷⁹ As recently as November 2015, two of the members, including the party's president Amit Shah, announced their endorsements to introduce anti-conversion bills in both houses of Parliament in order to "criminalize religious conversion without the government's consent."⁸⁰ They were unable to execute this plan only because the Ministry of Law and Justice advised against it, explaining that the matter was one that represented a state subject instead of a national one.⁸¹ This reasoning only served to reinforce the idea that anti-conversion laws were to be passed in a "stealthy" manner, instead of in a broad, rapid "blanket-rule" manner. Looking ahead, the potential for Hindu nationalists's success in promoting anti-conversion laws is evidenced by the recent, swift passages of bills in the states of Jharkhand and Uttarakhand in 2017 and 2018, respectively.⁸²

IV. COUNTERACTING THE EFFECTS OF "STEALTH THEOCRACY"

A. ALLEVIATING RELIGIOUS TENSIONS: WHOSE JOB SHOULD IT BE?

1. THE IMPRACTICAL ANSWER: PARLIAMENTARIAN ACTORS

Examining the recent rise in religious tensions that have come up in India throughout the past couple decades via the presence of "stealth theocracy," as

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. Meghan G. Fischer, *Anti-Conversion Laws and the International Response*, 6 PENN. ST. J.L. & INT'L AFF. 1, 26 (2018).

79. TARIQ AHMAD, THE LAW LIBRARY OF CONGRESS, STATE ANTI-CONVERSION LAWS IN INDIA 2 (2018).

80. *Id.* at 2-3.

81. *Id.* at 3.

82. Fischer, *supra* note 78, at 14-15.

well as their potential to linger on with the likely success of the BJP and its Hindu-nationalist allies in the 2019 general elections, the need for serious alleviation efforts continues to grow. In determining whose legal responsibility it is to reconcile with conservative and progressive interests, as well as preserve the secular identity of the state, one may consider the preferences of the Constitution’s drafters. During their debates, the framers applied incrementalist strategies by deferring controversial decisions and using ambiguous language regarding personal laws, with the intent of leaving future parliamentarians in charge of deciding how to implement the recommendations set forth in the Constitution.⁸³ This strategy made sense to many at the time, because it was necessary to wait for the emergence of a broader consensus on social issues.⁸⁴

In today’s climate though, relying on India’s parliamentary figures to alleviate religious conflicts may not work as well in practice as it might have in theory, because parliamentary leadership has gradually become more dominated by Hindu nationalists who have challenged the secular fabric of Indian society. Even if they were to implement a uniform civil code for all Indians to replace the religious-based personal laws, it may be the case that the BJP-led government would treat such legal doctrine as a “Hindu Code,” and some of the aforementioned tensions resulting from the emergence of “stealth theocracy” would still prevail.⁸⁵

2. THE PRACTICAL ANSWER: JUDICIAL ACTORS

In light of the fact that India’s ruling-party parliamentary actors will likely refrain from promoting secularism within the near future, one may deduce that the most practical solutions for India to sustain its secular character and counteract religious tensions would come from the hands of its judicial actors.⁸⁶ As a matter of fact, as shown by the Supreme Court’s relatively progressive decisions over the past couple years, India has recently witnessed a few instances in which its judicial actors have condemned faith-based customs that had been resulting in hardships for minorities within and outside of the Hindu community.

Some examples include striking down the federal government’s May 2017 ban on the slaughter of cows, which are considered sacred animals in Hinduism, in a ruling that emphasized the ban’s potential to adversely impact the livelihoods of individuals (largely Muslims) engaged in India’s beef and leather industries;⁸⁷ decriminalizing consensual homosexual sex on September 6, 2018, in the case *Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice*, explaining that under the notion of “constitutional morality,” people

83. Hanna Lerner & Ash Bali, *Constitutional Design without Constitutional Moments: Lessons from Religiously Divided Societies*, 49 CORNELL INT’L L.J. 227, 258 (2016).

84. *Id.* at 259.

85. Martha C. Nussbaum, *India: Implementing Sex Equality Through Law*, 2 CHI. J. INT’L L. 35, 40 (2001).

86. Given that “stealth theocracy” constitutes engagement of (1) judicial and (2) political actors, I am assuming that alleviating religious tensions in India can be made possible by either one or both of these groups.

87. KRONSTADT, *supra* note 24, at 16.

should feel free to have different tastes and preferences as long they do not violate any statute or take away another citizen's fundamental rights;⁸⁸ and lifting the Sabarimala Ayyappa Temple (Hindu place of worship located in Kerala) ban against women of the menstruating age range (ten to fifty) from entering into the building, holding on September 28, 2018, that any exception placed on women because of biological differences violates the Constitution.⁸⁹

B. DISSENTING OPINIONS: SECULAR COURTS SHOULD AVOID RELIGION

An argument against the notion that India's judicial actors are best suited to alleviate religious tensions is that India's establishment as a secular society might not be preserved if its civil courts were to aggressively address topics related to religion. Especially when the courts may simply be advocating for people whose identities have historically been marginalized, the more traditional, conservative members of religious communities would likely react with discontent, because their faith-based customs would be challenged by a court that claims to be upholding secularism.

The potential for such a form of tension is even demonstrated among the Indian Supreme Court justices themselves. For instance, on August 22, 2017, in the landmark case *Shayara Bano v. Union of India*, the Court proclaimed the unconstitutionality of the Islamic practice of *Talaq-e-biddat* ("triple talaq"), which had allowed any man to divorce his wife simply by stating the word "talaq" three times.⁹⁰ Under Article 25 of the Constitution, people of *all* genders were equally entitled to the freedom of conscience, as well as the right to profess, practice, and propagate religion.⁹¹ This was understood to mean that any patriarchal or one sided interpretation of religion ought not to be accepted, because the rights conferred by Article 25 were not confined to men alone.⁹²

In their dissenting response, Chief Justice J S Khehar and Justice S Abdul Nazeer proclaimed that the practice of "triple talaq" should not have been held unsustainable in law.⁹³ The two justices deduced that the issue raised in *Shayara Bano* was one of personal law, which was protected under Article 25.⁹⁴ Essentially, on issues regarding marriage, Muslims were to be governed by the Muslim Personal Law (Shariat) Application Act of 1937, instead of the Constitution.⁹⁵ To solidify their rationale, the dissenters pointed out that the Act did not conflict with any of the three expressed purposes of Article 25(1): public

88. Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice, (2018) 1 SCC 76-77 (India).

89. Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors., (2018) 1 SCC 3-5 (India).

90. *Shayara Bano v. Union of India & Ors.*, (2017) 1 SCC 403 (India).

91. *Id.* at 116.

92. *Id.*

93. *Id.* at 234 (Khehar & Nazeer, JJ., dissenting).

94. *Id.* at 222.

95. *Id.* at 222-223.

order, morality, and health.⁹⁶ On a broader note, Justices Khehar and Nazeer noted that “religion is a matter of faith, and not of logic. It is not open to a court to accept an egalitarian approach, over a practice which constitutes an integral part of religion. The Constitution allows the followers of every religion, to follow their beliefs and religious traditions.”⁹⁷

Disagreements on whether a court should be allowed to strike down religious practices are not only prevalent in matters regarding minority groups, like Muslims, but also are seen in issues that address the rights of marginalized individuals within the Hindu community. For example, in her dissenting opinion in the case *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.*, which ruled that the prohibition of women between the ages of ten and fifty from entering into the Sabarimala Ayyappa Temple was unconstitutional, Supreme Court Justice Indu Malhotra stated that “in a secular polity, issues which are matters of deep religious faith and sentiment, must not ordinarily be interfered with by Courts.”⁹⁸

Justice Malhotra’s central argument was that interfering with the Temple members’s desired mode of worship would violate Article 25 of the Indian Constitution, granting all worshippers of Lord Ayyappa the right to profess their religion by preserving the traditional character (based on centuries old religious practices) of the deity in their temple,⁹⁹ as well as Article 26 of the Constitution, which guarantees that every religious denomination, or any sect thereof, shall have the right to “maintain institutions for religious purposes, manage its own affairs in matters of religion, own and acquire movable and immovable property, and to administer such property in accordance with law.”¹⁰⁰

C. THE CHALLENGE: BEING AN EFFECTIVE MIDDLEMAN

The dissenting opinions in both *Shayara Bano v. Union of India* and *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.* symbolize a major challenge that Indian civil courts must face whenever they receive a request to address the constitutionality of religious practices that create hardship for marginalized groups. In order to prevent tensions from escalating, especially in a time when India’s political officials are themselves driving some of these tensions and “stealthily” challenging India’s establishment as a secular nation, judges must do their best to advocate for the most vulnerable citizens. At the same time, they must also refrain from overstepping any boundaries that may instill sentiments of enmity among religiously conservative individuals, especially those with the political power to respond to perceived threats through

96. *Id.* at 234.

97. *Id.* at 275.

98. *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.*, (2018) 1 SCC 22 (India) (Malhotra, J., dissenting).

99. *Id.* at 65-66.

100. *Id.* at 44.

policy that intensifies the harm already being done toward marginalized individuals.

V. STRATEGIES TO BRIDGE THE GAPS

A. OVERCOMING THE CHALLENGE: POSSIBLE SOLUTIONS FOR THE COURTS

Considering the rationale of the dissenters in *Shayara Bano* and *Indian Young Lawyers Association & Ors.*, as well as reconciling them with those cases's majority opinions, Indian civil courts must have an interest in bridging the gap between those who prefer that judges do not interfere with matters of religious faith and those who support judges's abilities to scrutinize the constitutionality of religious traditions. Some solutions that might be worth considering are those in which the courts would (1) more aggressively call on government officials to determine if and how religious communities want their personal laws to be modified, (2) diversify the major players within India's judicial system, or (3) encourage there to be a platform that would give people opportunities to obtain exemptions from specific laws that may be hindering their exercise of religion. These solutions would allow the courts to give a greater voice to those who have felt discriminated against by the practices of their religiously conservative peers or family members but at the same time refrain from striking down such centuries-old traditions that have contributed to India's cultural growth and development.

1. MODIFY PERSONAL LAWS

In her work "Piercing the Veil," Professor Madhavi Sunder examines the tensions between human rights law and religion.¹⁰¹ She shares a number of occasions in which human rights abuses that have become unacceptable after World War II are now being more tolerated when they are being committed in the name of religion.¹⁰² When delving into India, Professor Sunder focuses on the plight of Muslim women, specifically on the injustices they endured when then-Prime Minister Rajiv Gandhi enacted the Muslim Women's Protection After Divorce Act of 1986.¹⁰³ The Act, which deprived Muslim women of the right of maintenance guaranteed under the Criminal Procedure Code, was introduced to counteract the Supreme Court's decision in *Mohd. Ahmed Khan v. Shah Bano Begum*, which recognized the right of an elderly woman to alimony from her divorcing husband.¹⁰⁴ In an effort to maintain positive relationships with his Muslim male supporters, Gandhi introduced the legislation to overturn the Court's decision.¹⁰⁵

101. Madhavi Sunder, *Piercing the Veil*, 112 Yale L.J. 1399, 1401 (2003).

102. *Id.*

103. *Id.* at 1428.

104. *Id.* at 1427.

105. *Id.* at 1428.

The law sparked global outrage, and reformers used it to highlight the problem of state deference given to oppressive religious practices.¹⁰⁶ Much of the Muslim women activists’s outrage stemmed from the fact that the government never even sought their input about the issue.¹⁰⁷ As per these women, the government had failed to take into account the varying religious perspectives within India’s Muslim community.¹⁰⁸ Court decisions like *Shah Bano* enticed the Women’s Action Research and Legal Action for Women (WARLAW) to bring a petition to the Indian Supreme Court in 1994.¹⁰⁹ The petition asked the Supreme Court to order the government to state how it intended to determine whether communities wanted their personal laws changed, as well as how it intended to include the voices of women from these communities when making its assessment.¹¹⁰ Unfortunately for WARLAW, this initiative did not produce any concrete results, and the personal laws have been left intact.¹¹¹

By revisiting WARLAW’s request, Indian civil courts could challenge the monolithic and static manner with which the Indian government has characterized and treated religious groups.¹¹² In doing so, elected officials might be held to a higher standard when it comes to taking all constituents of a religious community into account when ceding legal power to them.¹¹³ If for some reason this task would not be feasible enough to conduct at the federal level, perhaps India’s lower courts could consider executing WARLAW’s request at more local levels of the judiciary system. Local execution could help those who geographically reside close to each other to create meaningful interactions through face-to-face communication, as well as better address the specific concerns of people throughout the various pockets of India.

2. STRENGTHEN RESERVATION PROGRAMS

A valid counterargument to the idea that India’s courts should order governmental entities to state how they intend to determine whether religious communities want their personal laws changed is that judges might exhibit bias in their deliberations on such an initiative. For instance, religiously conservative judges might be more likely to approve of the work of religiously conservative politicians, even if such politicians might not be considering the voices of more progressive members of various religious communities.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 1428-1429; ILANA LANDSBERG-LEWIS, UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (UNIFEM), BRINGING EQUALITY HOME: IMPLEMENTING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 41 (1998).

111. Sunder, *supra* note 101, at 1429.

112. LANDSBERG-LEWIS, *supra* note 110.

113. Sunder, *supra* note 101, at 1429.

One way to mitigate the effects of judges's political biases is to diversify the composition of judicial bodies, which could help judges neutralize each other's biases and more accurately and precisely assess the quality of work shown in the government's deliberations with religious communities regarding matters related to personal law. More diversity would also allow civil courts to acquire a more reflective understanding of the varying rationales that litigants are presenting to defend their actions. That way, if judges in the civil courts feel that it is inevitable for them to interpret religious texts when deciding the validity of a citizen's religious actions and beliefs, the chances that those texts would be reviewed by someone who actually subscribes to them in their day-to-day life would increase. Such an outcome would directly address the dissatisfaction of people who have historically seen their religious beliefs being interpreted by a secular entity comprised of individuals who do not even adhere to the same religion as they do.

In her work "India: Implementing Sex Equality Through Law," Professor Martha C. Nussbaum examines the potential benefits of appointing historically marginalized individuals to positions in the government, mainly that doing so would lead to better demographic representation in India's legislative and judicial bodies.¹¹⁴ As the framers of the Indian Constitution valued equality in terms of an end to systematic hierarchy and discrimination, they included the following text in Article 15, which prohibits discrimination: "Nothing in this article . . . shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or Scheduled Castes and the Scheduled Tribes."¹¹⁵ Hence, from the time of independence, the Indian tradition has actually pointed strongly in favor of quotas and affirmative action measures for deprived groups.¹¹⁶

To defend her point that India could benefit from appointing more female judges, as well as judges with a reflective understanding of women's issues, for example, Nussbaum explains the positive impacts that the Indian Constitution's 73rd and 74th Amendments have had on the country.¹¹⁷ The amendments reserved thirty-three percent of local council seats for women, who have since not only increasingly acquired political skills but also included their voices within the political process.¹¹⁸ If judicial entities would consider organizing similar initiatives, even if it meant reserving seats for short-term or part-time clerkships, then people who represent historically disadvantaged groups may too acquire judicial skills and eventually have their voices included within the judicial process. In this regard, reserving seats for Muslims, which is one group that has never received any benefits from affirmative action programs within the political

114. Nussbaum, *supra* note 85, at 39.

115. *Id.*

116. *Id.*

117. *Id.* at 46.

118. *Id.*

sphere, might act as a stepping stone toward resolving issues related to the handling of personal laws.¹¹⁹

3. ACCOMMODATE FOR PEOPLE’S RELIGIOUS PRACTICES

One difficult part of creating an affirmative action program though would be defining who qualifies for a reserved seat. In a country where a “disadvantaged” person could represent literally any religion, including Hinduism, the judicial entities may have a difficult time reviewing job applications, given that every single applicant could make a case that he or she has endured some form of social hardship. Because this could potentially elongate the process of alleviating religious tensions, any sort of reservation program must ideally be complemented with an initiative that focuses on short-term impact.

In their work “Conscience Wars in Transnational Perspective: Religious Liberty, Third-Party Harm, and Pluralism,” Professors Douglas NeJaime and Reva Siegel focus on religious liberty claims that are granted in the United States via the Religious Freedom Restoration Act (RFRA), which was enacted to recognize religious liberty as a statutory civil right.¹²⁰ Such religious liberty claims are put forth by people or institutions that are seeking to be exempt from a legal obligation to another citizen, due to the exempting party’s religious belief that the law is making them complicit in the sins of others.¹²¹

Professor NeJaime’s and Professor Siegel’s main conclusion is that in order to avoid culture war conflicts that may result from the significant burdens placed on citizens (“third parties”) who interact with exempting parties, religious accommodations must be limited in cases where they would inflict “material” or “dignitary” harm onto third parties.¹²² “Material” harms would include restrictions on access to goods and services, as well as information about them, and “dignitary” harms would be inflicted when refusals to serve or interact would demean those who act lawfully but in ways that depart from traditional morality.¹²³ An example where both “material” and “dignitary” harms might be inflicted may occur when a healthcare provider, due to religious or moral reasons, refuses to not only perform abortions or sterilizations on a patient but also provide counseling or referrals that might help them find alternative care.¹²⁴

If India’s civil courts were to successfully implement a similar case-by-case test in which they could see whether exempting a person from a law in order to accommodate his or her religious beliefs would lead to “material” or “dignitary”

119. *Id.* at 46-47.

120. Douglas NeJaime & Reva Siegel, *Conscience Wars in Transnational Perspective Religious Liberty, Third-Party Harm, and Pluralism* in *THE CONSCIENCE WARS: RETHINKING THE BALANCE BETWEEN RELIGION, IDENTITY, AND EQUALITY* 187-219, 188, 205 (Susanna Mancini & Michel Rosenfeld eds., 2018).

121. *Id.* at 190.

122. *Id.* at 191.

123. *Id.* at 203-204.

124. *Id.* at 191-193.

harm toward a third party, the courts could then alleviate religious tensions in a manner that would be more practical than implementing more robust initiatives, such as the modification of personal laws or reservation programs. Considering how much of India's transition in character from a secular to a more theocratic nation has happened "stealthily" through distinct local and state level government initiatives, it might make the most sense to counteract these initiatives in just as "stealthy" of a manner.

Employing the "material" and "dignitary" harm tests on a case-by-case basis would encourage the courts to delve more into the facts of a case, counteract any sort of backlash via deliberation with each individual civilian, as opposed to just leaders of community groups, and gradually make progress toward upholding India's standards of being a secular nation. At the end, not all parties involved in a case would feel satisfied with judicial decisions, but at least they would feel that their opinions were heard and that their interests were taken seriously. Finally, the courts, acting as secular entities, would find a way to balance all people's fundamental rights without having to outright obliterate or undermine anyone's religious beliefs.¹²⁵

VI. CONCLUSION

In the midst of an election year, India is at a crossroads. While the Preamble to its Constitution declares India as a secular state, it seems as though the real ethos of present-day India is actually veering the country toward becoming a religious state. This tension is difficult to rectify, not only because some of the most prominent political leaders have played a major role in generating it but also because much of it has been realized through less visible, sparse means characterized as examples of "stealth theocracy." Particularly, the BJP's rise in popularity and success over the past quarter-century has in large part resulted from localized, grassroots initiatives that have ignited the Hindu-nationalist movement.

Because coming up with and executing viable solutions to problems related to the movement probably will not be a priority for the ruling political party at any point in the foreseeable future, it may instead have to come at the hands of India's civil courts. The possibilities of religious tensions being alleviated through the judicial system has been evidenced over the past couple years, during which India's Supreme Court has decided cases in a relatively progressive manner in favor of people whose identities have historically been marginalized.

As Indian civil courts continue to address religion in the near future though, the main challenge they will face will be ensuring that they do not strip people of their fundamental right to freely practice religion, which is an issue that has been addressed in the dissents of recent landmark Supreme Court cases. To balance

125. *See generally* Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors., (2018) 1 SCC 45 (India) (Malhotra, J., dissenting).

out differing perspectives regarding the extent to which judges are constitutionally allowed to address or even strike down certain religious practices, some appropriate solutions that the courts could pursue are (1) reconsidering requests to work with the government and religious communities to modify personal laws, (2) setting up more reservation programs that allow people who represent historically marginalized communities to take part in the judicial process, and (3) accommodating for people’s faith-based traditions by granting them exemptions from specific laws that conflict with their religious beliefs, as long as those exemptions do not cause significant “material” or “dignitary” harm to third parties. By successfully executing these strategies, India would be able to alleviate some of the religious tensions that have resulted from the phenomenon of “stealth theocracy.”