There but for the grace of OGod: Religion and diversity in South African public schools

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Abstract
South Africa’s doctrinal approach to religion in public schools allows for circumscribed space for religious observances, while protecting diverse and minority interests. In Organisasie vir Godsdiens-Onderrig en Demokrasie v Laerskool Randhart [2017] ZAPJHC 160; 2017 (6) SA 129 (GJ), the High Court held that a public school cannot promote that it adheres to only one religion to the exclusion of others. The judgment placed weight on the value of diversity, which affirms inclusivity and difference in a pluralist society. While diversity is normatively significant, the court’s preference for it is consistent with an ongoing judicial trend that favours reliance on generalised norms over concrete provisions. This leaves open important questions as to how particular religious policies and observances at a school level should be tested within a local context, and the meaning to be given to constitutional requirements that religious observances at state or state-aided institutions be free, voluntary, and conducted on an equitable basis. Five years after that judgment was handed down, these debates are of renewed importance, with legislative amendments currently before Parliament that would require a public school’s code of conduct to take into account the diverse cultural beliefs and religious observances of learners.

Keywords
South African Constitution, public schools, freedom of religion, diversity

Introduction
South Africa’s Constitution protects the right to freedom of conscience, religion, thought, belief, and opinion. The Constitution does not include a provision endorsing a strict
separation between religion and state. Instead, the South African legal scheme navigates between the twin poles of absolute secularism within public institutions on one extreme, and full religious alignment on the other. It charts a course of co-operation where religion and the state can interact, so long as freedom from state interference regarding religion, conscience, and belief is preserved.

This raises important questions about the constitutional scope for religious observances in state and state-aided institutions such as public schools. Section 15(2) of the Constitution sets out:

Religious observances may be conducted at state or state-aided institutions, provided that—

(a) Those observances follow rules made by the appropriate public authorities;
(b) They are conducted on an equitable basis; and
(c) Attendance at them is free and voluntary.

This provision is echoed in the South African Schools Act 84 of 1996, provincial legislation and in national policy that guides religion in education. However, the way this all plays out for a public school is complex, particularly where an overwhelming majority of learners adhere to a single religion. In this article, I examine whether a public school may brand itself as adhering to a particular faith or religion or provide for religious observances of a particular faith.

The question received direct treatment by the Johannesburg High Court in the OGOD judgment (*Organisasie vir Godsdiense-Onderrig en Demokrasie v Laerskool Randhart* [2017] ZAGPJHC 160; 2017 (6) SA 129 (GJ)). An atheist organisation, the Organisasie vir Godsdienste-Onderrig en Demokrasie (happily abbreviated as OGOD) sought interdictory and declaratory orders from the court that religious practices conducted at several schools (such as beginning school assembly with prayer, distributing bibles, and evangelising during school time) violate the Constitution and legislation. The schools in turn contended that religious practices were constitutionally permissible. In a welcome judgment, the full bench declared that although there is no blanket prohibition on religious observances at schools or requirement of total secularism, it does contravene the Schools Act for a public school to promote that it adheres to only one (or predominantly one) religion to the exclusion of others, or to hold out that it promotes the interests of any one religion above others.

While the OGOD judgment was decided several years ago, it calls out for more extensive scholarly engagement. Five years on, this jurisprudence is of renewed interest: currently, there are draft amendments to the Schools Act before Parliament in the form of clause 7(b) of the Basic Education Laws Amendment Bill [B2-2022], which would amend section 8 of the Schools Act to provide that the code of conduct of a public school must take into account the diverse cultural beliefs and religious observances of the learners at the school. This echoes the judgment’s reliance on the constitutional value of diversity, which is relevant to ongoing contestations about cultural, religious, and linguistic rights in a pluralistic society.
I begin by briefly sketching the history of religion and schooling in South Africa, and then focus on the constitutional and legislative framework governing religion in public schooling in South Africa. Next, I discuss the OGOD judgment, arguing that it relied principally on the role that public schools play in promoting diversity and sidestepped providing further meaning to the specific requirements imposed by section 15(2) of the Constitution and the Schools Act that religious observances be equitable, free, and voluntary.

Diversity, recognised in the preamble of the Constitution, is often linked to the right to equality and, importantly, is taken to affirm societal difference and pluralism. However, courts’ favouring of the underlying value of diversity over giving content to section 15(2) of the Constitution (and section 7 of the Schools Act) is consistent with a preference for using generalised norms and values over concrete constitutional and legislative provisions. As others have pointed out, as a matter of constitutional doctrine this is questionable. This is not to say that the value of diversity has no role to play – particularly, in assisting to give normative content to the more particular provisions. However, practically, it leaves actors with a degree of uncertainty regarding how governing body rules will be assessed if challenged.

Religion and schooling: historical background

During British colonial rule, religion was given prominence in schooling, in part because of the connection between Christian missionaries and the establishment of schools in South Africa (Swartz and Kallaway, 2018; Randall, 1995). Following the formation of the union in 1910, government parties continued the ethos of a Christian character for public schools (Dickinson and Van Vollenhoven, 2002).

Under the apartheid regime, South Africa was expressly a Christian country, governed by Christian values (Chidester, 2006; Farlam, 2013). A slew of laws – regulating matters ranging from censorship to retail to intimate relationships – were governed by religious mores (see Sachs J in S v Lawrence; S v Negal; S v Solberg [1997] ZACC 11 [149]). In particular, the Nederlandse Gereformeerde Kerk (Dutch Reformed Church) was actively involved not just in formulating public policy but in acting as an ideological lynchpin for the apartheid state (Kinghorn, 1990; Du Toit, 2006; Cochrane et al., 1999; General Synod of the Dutch Reformed Church, 1990).

This was evident, too, in the regulation of religion in public schools. The government put in place the Christian National Education Policy of 1948 as well as the Education Policy Act 39 of 1967, applicable only to white learners. Section 2(1)(a) of this Act expressly required that schools have a ‘Christian character but that the religious conviction of the parents and the pupils shall be respected in regard to religious instruction and religious ceremonies’. This provision was taken to entrench a Christian ethos in white public schools generally, but vouchsafe the freedom of religion of individual white learners.

In Simonlanga v Masinga 1976 (2) SA 732 (W), decided in the same year as the Soweto Uprising, the High Court was approached to determine whether individual Black learners also had legal recognition of the right to freedom of religion. Learners had been
expelled from a school for refusing to participate in religious activities because such activities were contrary to their beliefs as Jehovah’s witnesses. The expelling school argued that only white learners were entitled to freedom of religion, as there was no correlative provision in the malign Bantu Education Act 47 of 1953. The court disagreed, finding that freedom of religion was embedded in the common law.

There was therefore some scope – at least, and this is a critical caveat, in theory – for legally opting out of religious observances in school, even where a public school actively endorsed and held itself out as being exclusively Christian. However, a default scheme of religious affiliation, with narrow scope for abstaining, is very different from what the Constitution now demands.

Current constitutional and legislative landscape

Constitutional provisions

South Africa’s democratic Constitution, in its preamble, affirms that the people of South Africa are ‘united in our diversity’. South Africa has opted for a co-operative or ‘positive recognition’ model (Farlam, 2013; and see Fredman, 2018 for a discussion of comparative approaches). South Africa’s model is not premised on an impermeable separation between religion and the state: indeed, the preamble to the Constitution makes express mention of God. Instead, the South African model affirms the significance of religious identities and the state’s obligation to facilitate these, urging ‘mutually respectful coexistence’ between the sacred and the secular (Minister of Home Affairs v Fourie [2005] ZACC 19 [90–96]). Importantly, however, the state should not endorse one religion over others.

Bilchitz and Williams (2012) discuss South Africa’s ‘positive recognition’ model, noting that: (1) the right to religious freedom has both negative and positive dimensions, which imposes concomitant obligations on the state to facilitate the realisation of this right; (2) religion should not be limited to the private sphere alone, as aspects of the right – such as the right to declare and manifest religious beliefs openly – imply public practice; and (3) the right to equality requires the equal affirmation by the state of differing conceptions of the good. Any endorsement that privileges a particular religion will have consequences not only for equal treatment, but also may violate freedom of religion itself, to the extent that such endorsement impedes the exercise of the right to freedom of religion by minority groupings.

The Bill of Rights, in section 15, recognises the right to freedom of conscience, religion, thought, belief and opinion. This right can be carved along at least two joints, as encompassing both an internal freedom for an individual to form, hold and change a belief, and an external freedom to declare beliefs openly, and to manifest and practice this belief (S v Lawrence [92], quoting the Supreme Court of Canada in R v Big M Drug Mart 1985 1 SCR 295). This belief need not be theistic; the freedom not to believe is also protected. Religion is typically practiced collectively, and religious identities are formed and performed in the context of communities. Section 31 thus also recognises the rights of religious and cultural communities qua communities. In addition, the Constitution
prohibits unfair discrimination on the grounds of religion, conscience, or belief in section 9(3).

When it comes to public schools, South Africa’s adoption of a positive recognition model is suggestive that, on the one hand, it is not required that a public-school environment be totally secular, precluding any religious observances, but that on the other, express religious alignment of, or endorsement by, a public school would not be constitutional – even if this reflects the overwhelming religious majority. There are two constitutional safeguards against such majoritarian alignment. The first is the requirement in section 15(2) that religious observances at school occur on an ‘equitable basis’, which is further bolstered by the condition that attendance at such observances be ‘free and voluntary’. The second is section 9, which affirms the equal protection and benefit of the law to all, and prohibits unfair discrimination on the basis of religion, conscience, or belief.

**Legislative regime**

The Schools Act provides more specific legislative scaffolding for how schools are run. Section 20 of the Schools Act sets out that school governing bodies are responsible for school governance, putting in place rules with localised content that are sensitive to their communities (see Federation of Governing Bodies for South African Schools (FEDSAS) v MEC for Education, Gauteng [2016] ZACC 14 [47]). Section 7 of the Schools Act repeats section 15(2) of the Constitution that religious observances may be conducted under school governing body rules, on an equitable, free, and voluntary basis. Relevant provincial legislative provisions echo these provisions.

Additionally, the Minister of Basic Education published a National Policy on Religion and Education (GN 1307 GG 25459 (12 September 2003)). The policy articulates a co-operative model for religion and education. While the policy itself is not binding, it provides guidance to all public schools. In substance, the policy recognises that schools are permitted to make facilities available for religious observances, subject to the requirements that this is on an equitable basis and that the observances are free and voluntary. School governing bodies can determine the nature and content of religious observances, which may take place at any time determined by the school governing body (including assembly), with the proviso that if observances occur as part of the official school day, they ‘must accommodate and reflect the multi-religious nature of the country in an appropriate manner’ (Policy [61]). The regulatory framework, then, envisages some autonomy for school governing bodies, within a broader policy and principled backdrop set by provincial and national government.

In sum, a number of important principles emerge. First, a school governing body is ‘an appropriate public authority’ and has the principal power to determine a religious policy for the school. Nevertheless, this power is not untrammelled. Co-operative governance between school governing bodies and provincial authorities is key. A school’s religious policy is subject, first, to the approval of the provincial member of the executive council tasked with education who has further powers to direct that the policy be reformulated; and second, to diversity, equality, and freedom of conscience and religion.
OGOD judgment

The issue of religion in public schools was first confronted, albeit indirectly, by the Constitutional Court in *S v Lawrence*, which found that the right to freedom of religion prohibits the outright endorsement of religion by the state but does not require a strict separation between the two. Later, in *MEC for Education: KwaZulu-Natal v Pillay* [2007] ZACC 21, the Court found that by failing to accommodate a Hindu learner’s wearing of a nose stud, a public school had unfairly discriminated against the learner. The school had a positive duty to accommodate religious and cultural diversity.

The question of religion in public schooling was squarely at issue in the OGOD judgment. The High Court was approached to determine three questions: (1) whether a public school is permitted to hold itself out as a Christian school; (2) whether a public school itself is permitted to conduct religious observances; and (3) whether a learner can be asked to disclose that she adheres – or does not adhere – to a particular religion.

Before turning to the substantive questions, however, the court (Lamont, van der Linde and Siwendu JJ) affirmed the principle of subsidiarity, and criticised the litigating atheist organisation for relying directly on the Constitution without relying on or challenging relevant legislative provisions ([29]). The litigant also did not cite the six school governing bodies or advance arguments targeting specific rules on religious observances, which constrained the court from granting any interdict against the specific schools.

This disposed of the interdictory relief but did not determine the declaratory relief, as the court was asked to make specific findings on the three questions. The court granted OGOD its sought declarator, finding that a school is prohibited from adopting one religion to the exclusion of others, and cannot hold itself as promoting the interests of Christianity (or any single religion). Total secularism is not required: instead, religious observances at schools may be permitted, so long as a diversity of beliefs is promoted. The value of diversity was central to the court’s determination, as was the role that public schools play as organs of state serving the interests of the public as a whole ([89]).

The court noted that even if a minority or non-religious learner is not required to attend voluntary religious observances, if the school holds itself out as subscribing to a particular religion, this could ‘inculcate a sense of inferior differentness’ ([93]). However, held the court, even where an individual learner is not so affected, schools are role players in a national project to promote the respect of diverse cultural and religious traditions (94–95)]. Where a school adopts a single faith, it sends a message that learners of all faiths are not welcome ([96]), which misrepresents the legally required position.

The court also held that the current demographic of a community cannot be decisive of whether a school can hold itself out as being religiously affiliated ([85]). On the contrary, it is desirable that feeder communities evolve, ‘given an unnatural residential demographic configuration that has resulted from historic laws that were racially skewed’ ([92]). For this reason, a public school owes duties not only to the feeder community as it is currently constituted, but also to prospective feeder communities as a corrective to the ongoing effects of spatial apartheid. In light of this, the court held that adopting a single faith brand does not provide equitably for all faiths in light of present and evolving demographics ([96]).
The way forward

The existing jurisprudence strikes a careful and commendable balance between recognising that there is some room for religious observances in public life including public schools, while setting parameters that guard against coercive religious practices in a diverse society.

Nevertheless, some difficult questions remain open. For example, the *OGOD* judgment is notable both for what was legally determinative – that is, the value of diversity and the implications of that value for religious observances in public schools – and for what was not. The judgment did not place much interpretive weight on the requirements imposed by section 15(2) of the Constitution and section 7 of the Schools Act, instead favouring the value of diversity to perform the conceptual heavy lifting. The court’s approach is consistent with a widespread but unfortunate trend in constitutional jurisprudence that favours use of generalised norms and values over specific rights, which has been subject to trenchant academic criticism (Woolman, 2007; Van Staden, 2020; Coggin and Pieterse, 2012). The jurisprudence on section 15(2) thus has not advanced beyond the broad observations made in *S v Lawrence*. How to assess whether a school governing body’s policy or practice complies with constitutional and legislative requirements, including that any religious observances at a school be equitable, free, and voluntary, is uncertain.

In what follows, I explore two areas for debate. First is the value of diversity, which has renewed importance given the foreshadowed amendments to the Schools Act that will require public schools’ codes of conduct to take into account the diverse cultural beliefs and religious observances of learners. Second, I discuss the meaning to be ascribed to section 15(2) of the Constitution and section 7 of the Schools Act should a particular set of school governing body rules be challenged, as this was left relatively open by the judgment.

Diversity

Doctrinally, diversity has been linked to the right to equality. Diversity is taken to affirm difference (*Lesbian and Gay Equality Project v Minister of Home Affairs* [2005] ZACC 20 [60]); to protect minorities or disadvantaged groups (majority judgment of Mogoeng CJ in *City of Tshwane Metropolitan Municipality v Afriforum* [2016] ZACC 19 [7–9], see also dissenting judgment of Froneman and Cameron JJ [126]); and to require a commitment to inclusivity and pluralism (*Christian Education* judgment [24]; *Fourie* judgment [61]). A recent judgment that found that the display of the apartheid flag constitutes hate speech and a symbol of white supremacy noted that displaying the flag undermines the vision of diversity, which is predicated on mutual respect and equal dignity (*Nelson Mandela Foundation Trust v Afriforum NPC* [2019] ZAGPJHC 324 [202–203]). Diversity has, too, played a role in justifying affirmative action policies on the basis that it boosts legitimacy and increases the range of perspectives (*Singh v Minister of Justice and Constitutional Development* [2013] ZAEQC 1 [30]).
Commenting on the OGOD judgment, De Freitas and Du Plessis argue that by foregrounding diversity, the court addresses the ‘plight of religious rights and freedoms’ and safeguards forms of expression that reflect religion in the traditional and general sense, where this is ‘generalised and collectively representative’ (De Freitas and Du Plessis, 2018). It is true that the judgment permits the accommodation of religious observances in the public sphere, and that a commitment to diversity entails recognition of the important role that religion can play in individual and communal life. However, the value of diversity can cut in the opposite direction to act as a normative brake against homogenous religious observances in a public-school setting, even if such observances or symbols are general or ‘collectively representative’. In this sense, diversity is in part about providing a space for, and amplifying, non-majority voices including, in the context of freedom of religion, atheist and non-religious voices.

Relatedly, the jurisprudence recognises that public schools do not merely represent communities constituted by particular beliefs. Given how our legislative scheme regulates school governance, there is room for circumscribed autonomy of school governing bodies – including their power to formulate rules that are sensitive to the communities in which the schools operate. Schools are located in a community-specific context and school governance can be construed as a form of grassroots democracy in action (Ernelo judgment [57]; Woolman and Fleisch, 2009). This is not the only relevant context, however. The role of public schools is not only to serve the immediate and contemporaneous feeder community, but to act in the public interest, part of which includes the promotion of the value of diversity (Ernelo judgment [8]). As public assets drawing on public resources, public schools ‘must advance not only the parochial interest of its immediate learners but may, by law, also be required to help achieve universal and non-discriminatory access to education’ (FEDSAS judgment [44], quoted in OGOD judgment [90]). Even were it the case that the present population of a school all adheres to the same religion, a school’s duty is not only to its current learner population but is also prospective in nature. Alignment with one religion – even if the overwhelming majority of a school’s learners are adherents of that religion – is precluded. The evolution of feeder communities should be welcomed as a corrective to spatial apartheid, with its formal construction of racially skewed and segregated demographics that cut across residential, workplace and educational geographies (OGOD judgment [92]; see also Equal Education’s arguments as amicus curiae discussed in FEDSAS judgment [38]).

This forms part of the public-oriented function of public schools, and their role in making possible meaningful political participation (Woolman and Bishop, 2013). The Constitutional Court has previously affirmed the transformative potential of education (Governing Body of the Juma Musjid Primary School & Others v Essay NO [2011] ZACC 13 [38]). This is in part a corrective to South Africa’s history, where schools were wielded as a tool of oppression and cultural domination.

Further, the Constitution in section 29(3) does provide for the right to set up independent educational institutions (although not at the state’s expense), which may be constituted along grounds of religion so long as there is no discrimination on the grounds of race. Section 15(2), which governs state and state-aided schools, must be understood in this context. Put differently, the right to establish an independent educational institution
which can be identified or aligned with a particular religion is housed under section 29(3), rather than section 15(2) (see *Wittmann v Deutscher Schulverein Pretoria* 1998 (4) SA 423 (T)). Accordingly, the Constitution does envisage scope for associative, religiously identified institutions – which are private entities, and are funded privately (Kriegler J in *Ex parte Gauteng Provincial Legislature: In re Dispute Concerning the Consti- 
tutionality of Certain Provisions of the Gauteng School Education Bill of 1995* [1996] ZACC 4 [42]; and *Woolman and Bishop*, 2013). Even so, this does not insulate them from constitutional duties, as a recent judgment demonstrates (*AB v Pridwin* [2020] ZACC 12; Finn, 2020). However, as far as religious observances at state and state-aided schools are concerned, matters are different. Were a school to be aligned with a particular or single religion, that may effectively amount to an establishment by the state of an institution based on a commonality of religion – which the Constitution precludes. Instead, the Constitution vests individuals with the right to establish such institutions. Once the distinction between section 15(2) and section 29(3) is given meaning, it becomes apparent that the Constitution does not strip learners or communities of their religious and associational rights.

**Section 15(2) requirements**

What meaning should be given to section 15(2) of the Constitution, which provides that religious observances may be conducted at public schools, on the proviso that: (1) the observances comply with rules made by appropriate public authorities; (2) the observances are conducted on an equitable basis; and (3) attendance at the observances is free and voluntary? Unfortunately, the *OGOD* judgment does not provide much guidance on this beyond what was established by the Constitutional Court in *S v Lawrence*.

I begin with the requirement of section 15(2) that the rules that an appropriate body creates must ensure that religious observances occur freely and voluntarily. Some considerations have emerged from case law. First, coercion that undermines the free and voluntary practice of religion is present not only where there is blatant compulsion but also in subtler, indirect forms. Governmental ‘power, prestige and financial support’ when endorsing a particular religious belief, exerts coercive pressure on religious minorities (*S v Lawrence* judgment [102]). Given this, it may be insufficient merely to point to a learner’s ability to invoke a conscience clause, permitting her to opt out of any observances. Whether a learner has a meaningful ability to opt out of a religious observance will be informed by a number of contextual considerations – including the learner’s age (it is generally easier for a 16-year-old to exercise this right than a six-year-old), the roles played by teachers as well as pressures brought to bear by other learners and the environment more broadly. In some contexts, the cost of opting out may be too high for an individual learner, and school policies on religion should be sensitive to this. Further, courts have cautioned that the creation of a ‘sense of inferior differentness’ ( *OGOD* judgment [93]; *S v Lawrence* judgment [103–104]) may vitiate the conditions required for free and voluntary participation by a learner in religious observances. These considerations are bolstered by the child’s right to have her best interests taken to be of paramount importance in any matter concerning her. In a school environment, where children’s normative development is ongoing and subject to multiple forms of pressure as courts
have recognised (*J v National Director of Public Prosecutions* [2014] ZACC 13 [36]), a school must guard against more insidious forms of coercion.

Perhaps more difficult is giving meaning to the requirement that religious observances take place on an equitable basis, which in turn pivots on what ‘equity’ in this context demands. South African courts have not yet had the occasion to pronounce definitively on this, but have recently considered the question in the context of language policies. There, the Supreme Court of Appeal noted that ‘[e]quitable’ treatment is clearly not the same as ‘equal’ treatment. Equitable treatment is treatment that is just and fair in the circumstances (*Lourens v Speaker of the National Assembly of Parliament of the Republic of South Africa and Others* [2016] ZASCA 11 [28], quoting Currie, 2013). As such, it seems that ‘equitable basis’ cannot require that the exact opportunities are afforded to all represented religions or religious practices. Nor can it mean crude majoritarianism, for the reasons already canvassed above. At minimum, it appears that the concept of equity drives at fairness in process. It does not necessarily entail either a principle of equal representation, or an artificial premise of quantitative fractions, broken down by the proportionate share of religious adherents in a school. There is support for this view in O’Regan J’s judgment in *S v Lawrence*. She notes that ‘the requirement of equity demands the state act even-handedly in relation to different religions’ which ‘does not demand a commitment to a scrupulous secularism, or a commitment to complete neutrality’ ([103] and [122]). ‘Even-handedness’ or ‘equity’ may generate different results, depending on the context.

It is clear that the legal scheme does not require that a public school be entirely secular and allows for the possibility of some religious observances. The adoption of a practical set of arrangements to permit observance inevitably means that the school lends its resources to the regulation of religious observance. However, in adopting a practical set of arrangements to allow for religious observance, a school would need to be careful not to create conditions under which learners consider the institution of the school to be supportive of all but one religion, and there is space for schools to actively provide platforms for a range of religious (and non-religious) practices, in line with a commitment to diversity and equity. How these constitutional and legislative injunctions play out in practice and in the context of school governing body rules remains somewhat underdetermined and will likely be subject to further scrutiny with the draft legislative amendment to the Schools Act requiring that schools’ codes of conduct expressly take into consideration diverse cultural and religious beliefs and practices.

**Conclusion**

South Africa’s approach to religion in public schools steers a careful course that allows for circumscribed space for religious observances in public spheres, while cognisant of the necessity of protecting diverse and minority interests, especially within a school environment. South Africa has endorsed a positive recognition model, buttressed by the constitutional and legislative framework that protects individual and associative freedom of religion, prohibits discrimination on the grounds of religion and culture, and safeguards against express religious alignment of, or endorsement by state institutions. In this case
note, I traced this model in jurisprudence, including *S v Lawrence* (which rejected a strict separation between religious institutions and the state) and *Pillay* (which affirmed the importance of diversity, accommodation and equality in public schools). Most recently, the question of religion in public schools was considered by the High Court in the *OGOD* judgment, which held that a public school cannot promote that it adheres to only one religion to the exclusion of others. The judgment placed much weight on the constitutional value of diversity, emphasising that public schools must act in the public interest. The value of diversity affirms inclusivity, difference and minority viewpoints in a pluralist society. While diversity is normatively significant, the court’s preference for it over giving meaning to the constitutional provision is consistent with an ongoing judicial trend that favours reliance on generalised norms over concrete provisions, which in turn risks denuding the Bill of Rights of meaning. This leaves open some important practical questions as to how particular religious policies and observances at a school level should be tested within a local context, and the concrete meaning to be given to constitutional requirements that religious observances at state or state-aided institutions be free, voluntary, and conducted on an equitable basis. These debates are of renewed importance, with foreshadowed amendments to the Schools Act currently before Parliament that would require a public school’s code of conduct to take into account the diverse cultural beliefs and religious observances of learners.

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