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Discriminatory Policies and Laws Target Indian Muslim minorities in the Recent Time: A Socio-Legal Study

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Abstract

The article gives a short overview of targeted discrimination against Muslims as minorities in India and the apathy of legal and political agencies to protect them. It suggests that neither of these two perspectives adequately capture the Indian Government's attention nor cease sufficiently the attention of the international legal order, which has a normative architecture unto its own. This article focuses on the uncertain effect of religious autonomy in India and democracy. The Indian constitution guarantees autonomy to its religious minorities and promises the minorities freedoms but there is a huge gap between constitutional rights and political reality for minorities, especially Muslims. Indian democracy has been weakened by the rise of xenophobic nationalism and threats to religious minorities. Even their safety and religious freedom have been compromised. Muslim women are abused and targeted publicly online. These trends were evident in the last few decades but have dramatically increased in recent years, and the administration has turned a blind eye. In response, the present Union Government of India and its political party attempt to engineer a Hindutva version of lebensraum in India. The radical Bhartiya Janta Party government passed discriminatory laws that are eroding the democratic nature of India and undermining its religious freedoms.

Keywords: Love Jihad, South Asia, India, Religious Nationalism, Hate Speech, Indian Muslim

1. Introduction

In recent years, religiously inspired nationalist movements and rightist political parties have gained prominence in several countries worldwide, especially in India. As the world's largest democracy, India is home to one-quarter of the world's voters, one-sixth of humanity, (Vaishnav, 2017), and the second-largest Muslim population in the World, it also has the largest religious minority in the world. (MAM & RB, 2021) Therefore, political developments in India are likely to have broader repercussions throughout South Asia and Southeast Asia. India is not alone in facing the challenges that accompany religious nationalism based on hatred: many democracies worldwide are witnessing a rise in such political movements. Such as Latin America, Western Europe, and the post-Soviet states, including Russia. (DeHanas & Shterin, 2018) Most religious nationalist parties possess a puritanical line that colors their electoral platforms and subsequent methods of governance with a religious, moral tone. Religious politics often adopt a majoritarian nationalism, which seeks to redefine the basis of national identity to exclude or marginalize religious minorities. (Friedlander, 2016)

Indian society has been suffering the violence of different nature. The most common communal violence that began during the colonial period has assumed the form of majoritarian violence directed against religious minorities. After Independence, gradually majoritarian violence has come to dominate the fore and is tormenting religious minorities with increasing intensity. The justice delivery system has so evolved that most of the culprits of violence belong to the majority community getaway without any severe punishment. (Punniyani, 7 March 2022) India's old philosophy of multicultural and multireligious society remained threatened by an increasingly exclusionary conception of national identity based on religion Hindutava.¹ (Devare, 2013) During recent years, religious freedom conditions in India experienced a drastic downward turn, with religious minorities, especially Muslims, under increasing assault, after the re-election of the present rightist government of 'Bhartia Janta Party (BJP)' in May 2019. (USCIRF, 2018) The Union government of BJP used its strengthened parliamentary majority to establish national-level policies violating religious freedom for the Muslims as a minority community throughout India. The Union government allowed violence against Muslim minorities and allowed hate speech and incitement to violence. (USCIRF, 2020) The Universal Periodic Review (UPR)² attributes anti-minority violence to the Indian Government, including the present governing political party. The rise of xenophobic discrimination and threats to religious freedom of minorities was evident in the past, primarily targeting Muslims, Christians, and other minorities but has dramatically increased now.

Threats and hate speech against religious minorities have escalated drastically over the last few years since 2014. Killing or lynching in the name of "cow protection/vigilantism" is treated as a heroic deed. Even after the outbreak of COVID-19, physical, verbal, and psychological warfare is being waged against them, pushing further their ostracisation in Indian society. Regrettably, ideological hatred has been practiced in the garb of patriotism and nationalism. Though the Indian constitution guarantees autonomy to its religious minorities and promises the freedom to manage their religious affairs independently Article 15, which encapsulates one of the fundamental rights of India's constitution, explicitly prohibits discrimination on the grounds of religion, besides race, caste, sex, or place of birth. (Kidwai & Sahar, 2020)

In the recent past, COVID-19 and choice of dress practices relating to the Hijab issue of Muslim women have simply added a new dimension to the hate speech and disinformation circulated by national media against the Indian Muslim community. (Regan, Sur, & Sud, 2020) At the same time, political leaders were busy aggravating tensions between religious groups. Official actions were not aimed at fighting the virus but were busy restricting Muslims' religious practices and legal rights.

Videos of Hindu religious leaders calling for mass killings (Genocide) during 'Dharma Sansad' or 'Religious Parliament in Haridwar' and for the use of weapons against Muslims that went viral on social media on 22 December 2021 prompted the Supreme Court to order an investigation into hate speech in Uttarakhand state. (AL-Jazeera, 2021) At the concluded Dharam Sansad in Hardwar, Sadhvi Annapurna aka Pooja Shakun Pandey, a Mahabaleshwar of the Niranjani Akhara and general secretary of the Hindu Mahasabha, also gave a call to arms and incitement to genocide, "ready to die or kill." Several recent cases of atrocities against Muslims encouraged by supporters of the ruling BJP party, such as a government minister who garlanded eight Hindus convicted for lynching a Muslim, and the country's new broadcasting minister who was seen last year in a viral video inciting the Hindu crowd to "shoot Muslims." This is an attempt at ethnic cleansing, systematically forced removal of Muslims, with the intent of making them ethnically homogeneous by forced conversion. Along indirect methods aimed at forced migration by coercing the victim group to flee such as murder, rape, and property destruction.

India's BJP-led government has stripped Article 370, the autonomy of Jammu and Kashmir August 2019, the only Muslim majority state after seven decades, characterizing it as the correction of a "historical blunder" (Pandey G. , What Happened with Kashmir and why it matters?, 2019) Indian constitution under Article 370 guaranteed notional autonomy to the state. Article 370 included a special provision that said only permanent residents could own and buy land in Jammu and Kashmir and gave them special privileges in education and jobs. The Union government divides the state into two parts (union territory). They are to be ruled directly from Delhi, Union Government. (The Times of India, 2019) The proclamation was accompanied by a curfew in the state that included the house arrest of prominent Kashmiri leaders, the severing of all internet, cellphone, and landline connections for almost a year, and the deployment of thousands of additional troops in what is already, with nearly a million

soldiers, one of the most militarized regions in the world. (Mundi, 2019) The Armed Forces Special Powers Act (AFSPA), a piece of colonial-era legislation still in effect in Kashmir, offers virtual immunity to security forces for all acts of violence. India's military in Kashmir has unfolded apace under this law, spurring massacres, disappearances, torture, rape, and the deliberate blinding of protesters. (Ganai, 2021) The authorities detained many of these people without informing their families about their whereabouts; several were even transferred to jails outside the state. Hundreds of habeas corpus petitions were filed by families seeking information about those detained in the courts. Courts delayed hearing the petitions for over a year in the majority of cases. Out of the 554 habeas corpus petitions filed in the Jammu and Kashmir High Court after August 5, 2019, the court had passed judgment in only 29 cases by September 2020. (Narla & Rajagopalan, 2020)

Muslim women are bullied, harassed, humiliated, and denied entry into educational institutions. A dispute over the hijab, a headscarf worn by Muslim women who were not allowed to enter college, has caused a deadlock at a women's college in the southern Indian state of Karnataka. It's not uncommon to wear hijabs and burkas in India, but denial has created a feeling of threat in an increasingly polarised and charged atmosphere.

Hindutva³ forces recently decided to haunt the prominent Muslim women by "auctioning" them online on apps such as 'Bulli Bai' and 'Sulli Deals,' the Indian Muslim women up for sale. The app pretended to offer users the chance to buy a "Bulli and Sulli" - a derogatory slang term used by right-wing Hindu trolls for Muslim women. There was no actual sale of any kind. The purpose of the app was to degrade and humiliate them. (Pandey G. , Sulli Deals: The Indian Muslim women 'up for sale on an app', 2021) These acts of online abuse have the power to "belittle, demean, intimidate and eventually silence Muslim women." This targeted and planned attack is an attempt to take away the voice from of the educated Muslim women who express their opinion and speak out against Islamophobia.

The article gives a short overview of targeted discrimination against minorities in India and the apathy from legal and political agencies to protect them. It suggests that neither of these two perspectives adequately capture the Government's attention nor cease sufficiently the attention of the international legal order. This article focuses on the uncertain effect of religious autonomy in India and democracy. The Indian constitution guarantees autonomy to its religious minorities and promises the minorities freedoms. Indian democracy has been weakened by the rise of xenophobic nationalism and threats to religious minorities. Even their safety and religious freedom have been compromised. Muslim women are abused and targeted publicly online. These trends were evident in the last few decades but have dramatically increased in recent years, and the administration has turned a blind eye. In response, the present Government and its political party are attempting to engineer a Hindutva version of *lebensraum* in India.

2. Muslim Minority in India

It is essential to remember that the Indian minority has not migrated to India from the outside. Instead, they lived there from generation to generation. According to last census conducted in 2011, in India minority generally consists of Christians (2.5%), Sikhs (2%), Jain (1%), (Times, 2014) and Muslims (14%), which is the world's third-largest population. In India majority consist of Hindus; their population includes 80% of India's population. (Firstpost, 2015) India is a secular state, but it's a utopian concept in a virtual sense. In a country where more than 80% of the population consists of one religion, it's challenging to provide equal status to the minority. So, to provide equal status to these minorities, special privileges are being accorded to them in the Indian constitution. An example of Muslims in India has a poverty rate of 43%, whereas the national average is 39% (National Sample Survey Organisation, 1999-2000). In rural areas, Muslim landlessness is 51% compared to 40% for Hindus. (Majumdar, 2018)

Literacy rates are substantially lower among Muslims, leading to deprivation of jobs in higher positions in government offices and skilled professions in the service sector. In urban areas, 60% of the Muslims have never gone to schools against the national average of 20%. Only 5% of Muslim women have completed high school education, and the income of the average Muslim is 11 % less than the national average. To this may be added the Kashmiri Muslim community, with its distinct political history and its guaranteed status of self-rule in the past, is

a testimony to the betrayal of rights and the denial of justice to the Muslim population. (Majumdar, 2018) So, there is still a need to further implement new laws to meet their drowning standards.

A report commissioned by the Congress government, the Justice (Retd) Rajinder Sachar Committee Report, brings out the issues of income, education, and employment related to Indian Muslims. The Prime Minister set up the Committee as a High-Level Committee under the Chairmanship of Justice (retired) Rajinder Sachar to examine the social, economic, and education status of the Indian Muslim community as standing in 2006. The findings of the Sachar Committee in 2006 have indicated certain levels and forms of systemic discrimination and official prejudice operating in Indian society at almost all levels against Muslims, and some of the results have shocked the whole country. The Committee used data tabulated indices for levels of education (matriculation, graduates and above), employment (workers and formal sector), economic (poverty and land holdings) between Hindu and Muslim. (Parvez & Hasan, 2015)

On the education front, only about 3.6 percent of Muslims above the age of twenty are college graduates, according to recent data collected in 2006 from the National Sample Survey Organisation (NSSO). 54.6 percent of Muslims in villages and 60 percent in urban areas have never attended schools. 3.1 percent of the Muslim community in urban areas are graduates, and 1.2 percent are post-graduates. Only 0.8 percent of Muslims in rural areas are graduates. The Committee also found an inadequate number of government schools in the Muslim-dominated areas contributing to the low number of Muslim boys and girls attending the schools. (Parvez & Hasan, 2015)

2.1. Brief Historical background of Muslims as a Minority in India

The first mosque was built in India 629 AD, Cheramaan Jumma Mosque, Thrissur Kerala. Islam was introduced in India by the Arab invasion of Sind in CE 712 and subsequent invasions of Muslims in the eleventh and twelfth centuries. In the sixteenth century, Islam firmly established itself as a force through the Mughal empires. The Mughals generally refrained from forcible conversions to Islam, and the great Mughal Emperor Akbar granted a remarkable measure of tolerance and autonomy to non-Muslims. Although soldiers and officials came with the Mughals from Central Asia, the bulk of the Muslim population is descended from peoples of India, mainly from members of lower castes who converted to Islam to escape from persecution and repression at the hands of the caste Hindus. (Chand, 1972) While the concentration of Muslims was in the northwest of India (present-day Pakistan) and the east (present-day Bangladesh), there were also substantial numbers throughout the north and east. The decline of Muslim domination of India and the ultimate dispossession of the Mughal empire had several consequences. While bitterly resenting the loss of the kingdom, Muslims had to bear the brunt of the retaliatory policies at the hands of the new colonial masters after the failed uprising of 1857. (Chand, 1972)

The Muslim League came in time to represent the aspirations of the Muslim masses in India during 1906. It ultimately spearheaded the Pakistan movement in 1940, led by Mohammed Ali Jinnah and Liaquat Ali Khan. The conflict between the Muslim League and the Indian National Congress, at the helm of the movement for independence from Britain, eventually resulted in the decision to partition India and create Pakistan, 14 August 1947. (Mujahid, 2007)

The division of India along communal lines could not wholly eradicate the religious minorities; instead, it contributed to exacerbating the already existing tensions and divisions. The tragedy that ensued at the partition with Muslims, Sikhs, and Hindus, all victims of brutal and widespread conflict, remains one of the great catastrophes of human history.

So far as India's Muslims were concerned, the creation of Pakistan as a homeland for Muslims resulted in a new minority problem for now independent state of India. Muslim-majority regions (except Kashmir) separated to form the state of Pakistan. Muslim inhabitants of India now felt more insecure. (Jalal, Self and Sovereignty: Individual and Community in South Asian Islam since 1850., 2002) The numerical strength of Muslims in India also decreased, from over 26 percent of the population during 1941 (Jalal, The Sole Spokesman: Jinnah, the Muslim League and the Demand for Pakistan, 1994) to about 14.4 percent according to the 2011 census.

Indian Muslims are not granted the same constitutional safeguards as the scheduled castes and scheduled tribes and they are not entitled to reservations in employment and education. Muslims are strikingly underrepresented in civil service, military, and higher education institutions.

2.1.2. Rise of Hindutva forces – a new development

The assassination of Mahatma Gandhi, the founder of the nation, brought special attention to the Hindu nationalist movement Rashtriya Sewak Sangh RSS, a religious and political revivalist movement that seeks to make Hinduism the dominant and exclusive source of Indian culture and identity and ultimately make India a Hindu Rashtra (Hindu state). (Mukherjee, Mukherjee, & Mahajan, 2008) India was ruled by Muslim emperors and kings for over eight hundred years hence RSS projects Islam and Muslims as “foreigners ” hostile and inimical to the Hindu essence (Hindutva) of India. (Sahgal, 2020) Because of political compulsion, RSS has created a political wing, Jan Sangh, and later changed its name to Bharatiya Janata Party (BJP). BJP has mastered electoral victories in the 2014 and 2019 national elections in the overwhelming majority. Now they look into the possibility of achieving their dream, India as a Hindu Rashtra (Hindu state). (Shani, 2021)

In 1990, the BJP leader, L. K. Advani, began a mass movement to demolish the Babri Mosque in Ayodhya and replace it with a temple for Hindu gods, Ram. The movement started as a transportable rally from Somnath in Gujarat to Ayodhya in Uttar Pradesh. This Ram Rath Yatra, (a chariot journey), has become a symbol of revivalism in Indian culture and radicalized the population. Ultimately, the Babri Masjid was demolished on 6 December 1992 by Hindu forces backed by RSS in an act of shocking vandalism. (Parthasarathy, 2016) This was allowed to happen while India was still governed by political parties that were supposedly secular at large. The point of highlighting this epic act of religious vandalism is to underscore the fact that even before Hindu nationalists came to power in 2014, India’s political environment and culture, despite its secular constitution, had become Islamophobic and infused with Hindutva ideology. (MAM & RB, 2021)

In the general elections of 2014, the Hindu nationalist party came to power, and it heralded the beginning of an era of state-sponsored Islamophobia in India. Hindutva is an ideology that equates Indianness with being exclusively Hindu. It seeks to subvert the secular and pluralistic aspirations of India and is trying to set it on a path that will eventually make it a Hindu state with the Hindu ethos as the dominant feature of the national culture. (MAM & RB, 2021)

Islam is the second largest religion of India and Muslim culture has deep historical roots in India’s heritage. Its existence remains a barrier to the Hindutava dream, and the Sangh Parivar (an Umbrella cluster of Hindutva-advocating organizations, movements, and parties) are determined to erase or at least marginalize Islam in India. (Redding, 2021) After gaining a majority in the parliament in the 2014 elections, the political branch of the Hindutva family, the BJP, began an accelerated process of alienating Muslims and adopted strategies to undermine the legal framework that protects Muslims. They adopted the policy of undermining the secular nature of the Indian constitution and eliminating the non-constitutional sources of minority rights.

2.2 *Constitutional rights accorded to Minorities and their protection. (India T. C., 2020)*

Article 14 of the constitution recognizes the equality of all before the law.

Article 15 underscores the prohibition of discrimination based on “religion, race, caste, sex or place of birth.”

Article 25 of the Indian constitution gives its citizens the freedom to profess, practice, and propagate their religion. This is a constitutional right of Muslims. They should be able to say they are Muslims, fast, pray, celebrate their festivals, and promote and propagate their faith (in other words, exercise Da’wah).

Article 16 acknowledges equal opportunity for public employment.

Article 26: It permits religious minorities to manage their religious affairs. However, this right has to be exercised in a manner that conforms with public order, morality, and health.

Article 27: Freedom as to payment of taxes to promote any particular religion. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for promoting or maintaining any particular religion.

Article 28: No one can be compelled to attend any religious instruction or worship at a state or state-supported institution.

Article 29 ensures the right of minorities to preserve their language, culture, and heritage.

Article 30 Right of a minority to establish educational institutions. (Pandey J. , 2006)

Article – 30(1) gives the linguistic or religious minorities the following two rights:

- (a) The right to establish, and
- (b) The right to administer educational institutions of their choice.

Article – 30(2) bars the state, while granting aid to educational institutions, from discriminating against any educational institution because it is under the management of a linguistic or a religious minority. It mandates that in granting aid to educational institutions, the state shall not discriminate against any educational institution because it is under the management of a minority, whether based on religion or language. (Jain, 2006)

The minorities have been given protection under article 30 to preserve and strengthen the integrity and unity of the country. The sphere of general secular education will develop the commonness of boys and girls of India. This is in the true spirit of liberty, equality, and fraternity through the medium of education. (Jain, 2006) The Supreme Court has pointed out in Ahmedabad St. Xaviers College v. the State of Gujarat that the spirit behind article 30(1) is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice. (Ahemdabad St. Xavier's College v. State of Guajrat, SC 1389, 1974)

The founder of Indian constitution has framed a liberal progressive, secular form of constitution, and grant much autonomy and freedom to religious minorities. It permits religious minorities to manage their religious affairs. (Singh P. , 2005) According to the case of (A.S.E Trust v. Director, Education, Delhi Adm., Del 207, 1976), the term 'minority based on religion should be restricted only to those religious minorities, e.g., Muslims, Christians, Jains, Buddhists, Sikhs, etc., which have kept their identity separate from the majority, namely, the Hindus. Muslim Personal Law (MPL), based on the Shariat Act of 1937, was enacted ten years before India's independence and remains operative.

3. Discriminatory laws and violence against Muslim minorities in recent years

More multifarious targeted forms of violence started against minorities in India. A few such laws and incidents of violence against Muslim Minorities are discussed here.

3.1. National Register of Citizens: Discrimination and denial of nationality

Relevant ICCPR provisions: Art 2 (non-discrimination), 7 (freedom from inhuman treatment), 14 (right to a fair trial and independent judiciary) are violated as below.

The complete draft National Register of Citizens (NRC) in Assam was published on 30th July 2018, raising fears that, contrary to international law, it risked arbitrarily depriving the nationality of over 4 million persons and rendering them stateless. The populations at risk are overwhelmingly from minority ethnic, religious, and linguistic groups consisting of Muslims and Hindus of Bengali descent and Nepali-speaking people with high percentages of women, children, and daily wage workers, all among the most marginalized and excluded communities. (Saldanha & Madhavapeddi, 2018) Three days of violence erupted in Delhi with mobs attacking Muslim neighborhoods during February 2020, the aftermath of NRC agitation, (Act, 2019) after Lok Sabha (one of the houses of Parliament) cleared Citizenship Amendment Bill in December 2019. (Tiwary & Dastidar, 2019) There were reports of Delhi police operating under the Home Ministry's authority, failing to halt attacks and even directly participating in the violence. At least 50 people were killed. (Gentleman, 2020)

3.1.1. Hate speech and incitement (Art 20 of ICCPR)

Generally, the law to deal with hate speech and prohibition of incitement to hatred is contained in sections 153, 153a, 295a, and 505 of the Indian Penal Code. Section 123 (3A) of the Representation of People Act, 1951, is also applicable to political candidates during elections. These are weak. The state's record of enforcement of the laws is still poorer. According to an NDTV report of 2018, high-ranking politicians' hateful and divisive language increased almost 500 % in the previous four years. Of the 45 leaders responsible for hate speech since April 2014, only 6 cases were evidence of the accused being reprimanded or cautioned or issuing a public apology. At least 21 political leaders (or 48 %) had recorded more than one instance of hate speech. (Jaiswal & Jain, NDTV19, 2018)

3.1.2. Extrajudicial killings (called 'encounter killings' or 'fake encounters' in India)

State (province) police have also targeted Muslim youth, with Muslims killed disproportionately in extrajudicial killings, what is called 'fake encounter killings in India, in Uttar Pradesh and Haryana. (Citizens Against Hate, 2018) Northern Uttar Pradesh state has seen a spate of encounter killings by the local police since March 2017. (Citizen Against Hate, 2019)

According to the state government of Uttar Pradesh (UP), there were 3,026 'encounters' in UP from March 2017 to July 2018. Seventy-eight criminals were killed in these encounters, 7,182 were arrested, and 838 sustained injuries. In the six months between January 2018 and July 2018, 61 criminals have killed an average of more than eight persons per month in the encounters. (Indian Express, 2018) Fact-finding reports by civil society and media reports have stated that several victim families are being continuously harassed, threatened, arrested in fabricated cases. The five UN human rights experts expressed alarm about allegations of at least 59 extrajudicial killings by police in UP since March 2017 and the pattern of events in the cases of individuals allegedly being abducted or arrested before their killing and their bodies bearing injuries indicative of torture. (The Hindu, 2018)

According to 2015 statistics from the National Crimes Records Bureau, more than 67% of those in India's jails are defendants under trial, 25% of whom were in prison for over one year. Muslims, Dalits, and Adivasis make up 55% of India's population, but only a combined 39% of the country's total population. Overrepresentation of minorities in India's prisons reflects a more profound institutional bias against minorities about law enforcement, with severe manifestations including cases of "encounter killings" and physical abuse by authorities. (Viray, 2016)

The extra-judicial killings show that the National Human Rights Commission and the Supreme Court guidelines need a reworking. The only way to stem the rising tide of extra-judicial killings is to end the culture of impunity and punish police officers who resort to such extra-legal means.

3.1.3. Anti-cow slaughter' laws

Mob lynching has become today's way of life in the northern part of India. On 22nd June 2019, a viral video did the rounds on social media in India in which a young Muslim man tied up, bleeding profusely all over his body, hands folded, was being lynched by a mob that forced him to chant Glory to Lord. (Ayub, 2019) Saberlin (Saberlin, 2018) added that the man, later identified as 24-year-old Tabrez Ansari, was beaten for hours until he died at the hands of a mob in the eastern state of Jharkhand. It was a hate crime. According to Abraham and Rao (Abraham & Rao, 2017), this phenomenon has continued, and 30 Indians were killed in 63 incidents from 2014 to 2017, and according to an India Spend content analysis of the English media. In the wake of several well-publicised lynching and mob violence incidents, most of them related to issues surrounding cattle trade or beef consumption. (Subramanya, 2017)

In May 2018, a Muslim tailor, Siraj Khan, was beaten to death by a cow vigilante mob in Madhya Pradesh following accusations of slaughtering a bull. (Ghtawai, 2018) 'Anti-cow slaughter' laws exist in 21 states in India, with differences in state legislations ranging from a total ban on slaughter to punishments for transportation of cows. (Frayner, 2019)

Gujarat increased its punishment for cow slaughter to life imprisonment, becoming the country's most severe. Discriminatory impacts are felt directly by religious minority groups, particularly Muslims and Christians, but also lower-caste Hindus, including Dalits, many of whom consume beef. Nearly 30 Muslims have been lynched in India over suspicions of cow slaughter, possession, and consumption of beef, since 2015. (Giri, 2018)

In 2018, the Supreme Court urged (Gowen, 2018) the Union and state governments to combat lynching with stricter laws. But the Union government and ten states had failed to take appropriate action by July 2020, the Supreme Court again directed them to do so. (USCIRF, 2020) However, instead of complying, the Home Minister called existing laws are sufficient and denied lynching had increased. (Shah, 2019) At the same time, the Home Ministry instructed the National Crime Records Bureau to omit lynching from the 2019 crime data report. (Singh V. , 2020)

The U.S. Commission on International Religious Freedom (USCIRF) chairman, Mr. Tony Perkins, called for the Indian government to take action to prevent further violence. "We condemn in the strongest terms this brutal murder, in which the perpetrators reportedly forced Tabrez Ansari to say Hindu chants as they beat him for hours." (Ayub, 2019)

3.1.4. Anti-conversion' Laws (officially called Freedom of Religion Act)

These laws that are now being hoisted by Hindu radicals reflect the widening gap between secularism and religious freedom that is enshrined in the Indian constitution. (Sinha, 2021) Anti-conversion laws are in force in six states (provinces), with recent efforts to introduce laws to other remaining states. The controversial law was enacted to "provide freedom of religion by prohibiting conversion from one religion to another by misrepresentation, allurement, use of threat or force, undue influence, coercion, marriage or any fraudulent means. While these laws expressly prohibit conversions where fraud, force, are involved, in practice, the legislation has been used by right extremists to discourage or prevent conversion from Hinduism to other religions, particularly Islam and Christianity. Interfaith couples have faced harassment, with lynching carried out against so-called 'love Jihad' – a purported Muslim conspiracy to lure Hindu women into marriage. The concept of love jihad largely means love is strategically used by male Muslims to trick unaware Hindu girls into marriage, marry them, convert them to Islam. (Malji & Raza, 2021)

The law stipulates a jail term between one and five years for religious conversion in violation of section 3, which prohibits conversion, or an attempt to conversion by misrepresentation, allurement, threat, or force. If the conversion involves women, minors, or people from the scheduled castes and tribes, the punishment is two to 10 years in prison. While crimes registered under the law are cognizable and non-bailable, the burden of proof lies on the accused. "The law has been designed in a way that it doesn't need much evidence to register a case. The complainant and their family can file a complaint, and the onus of proof lies on the accused." When a Hindu man marries a Muslim woman, Hindu organizations always portray it as romance and love, while when the reverse happens, it is depicted as coercion.

Since the law came into effect, Uttar Pradesh (North Province) authorities have filed cases against 86 people, 79 of whom are Muslims, accusing them of "enticing a woman" and forcing her to convert to Islam. Seven others are accused of coercing women to convert them to Christianity. These statistics are part of the state government's affidavit presented before a high court bench Allahabad, in response to a batch of public interest litigations (PILs) that claimed the law violated several constitutional rights. (Anand, 2021)

The famous jewelry brand Tanishq, owned by the Tatas, India's biggest companies, withdrew an advertisement featuring an interfaith couple after a right-wing backlash on social media. The ad showed a baby shower organized for a Hindu mum-to-be by her Muslim in-laws. Rightist Hindu groups said the advert promoted "love jihad" - an Islamophobic term that implies Muslim men preying on Hindu women to seduce them and marry them. (Pandey G. , India Love Project: The Instagram account telling tales of 'forbidden' love, 2020) According to official data, a total of 107 people has been booked, of whom 78 were Muslims, and 29 were Christians. (The Hindu, 2020)

3.1.5. International Response on Discriminatory Citizenship (Amendment) Act (CAA)

The CAA drew international condemnation and prompted protests around the world. The Office of the UN High Commissioner for Human Rights called the law “fundamentally discriminatory.” (UN Human Rights Office, 2019) In February 2020, the UN secretary-general said he was concerned over the future of religious minorities in India after the enactment of the CAA, saying “there is a risk of statelessness.” (The Hindu, 2020) In January 2020, the United States Congress held a hearing on global religious persecution and raised concerns over the citizenship law and citizenship verification processes. (Lakshman, 2020) The same month, the European Parliament debated a joint motion on the law that described it as “discriminatory in nature and dangerously divisive.” (India P. T., 2020) The US Commission on International Religious Freedom said the US government “should consider sanctions against the home minister and other principal leadership” and held a hearing in March during which one commissioner raised concerns that the law “in conjunction with a planned National Population Register and a potential nation-wide National Register of Citizens, or NRC, could result in the wide-scale disenfranchisement of Indian Muslims.” (USCIRF, 2019)

3.1.6. Delhi Riots

The government’s citizenship policies sparked weeks of nationwide protests beginning December 2019. During the protests, BJP-affiliated groups attacked protesters then police did not intervene in several cases. Police used excessive and unnecessary lethal force, in at least three BJP-governed states, killing at least 30 people during protests and injuring more. An independent investigation by the Delhi Minorities Commission found that the violence was “planned and targeted” and that some policemen actively participated in the attacks on Muslims seen in a video on February 24 2020. In that video several policemen are seen beating five grievously injured Muslim men lying on the street, forcing them to sing the Indian national anthem to prove their patriotism. (The Guardian, 2020) The situation was aggravated as Hindu mobs armed with swords, sticks, metal pipes, and bottles filled with gasoline, targeted Muslims in several neighborhoods in northeast Delhi. While most of the 53 people killed were Muslim, a policeman and government official were among the Hindus who also died. (The Hindu , 2020) In contrast, the Delhi police have filed politically motivated charges, including terrorism and sedition, against 18 activists, students, opposition politicians, and residents – 16 of them Muslim. (The Hindu , 2020)

3.2. *Sponsored Religious Discrimination*

At the height of the Black Death in the 14th century, rumors circulated throughout Europe that Jews were deliberately transmitting the plague by poisoning wells. Rather than quell these rumors, some governments effectively endorsed them and incorporated them into official policy. In 1349, the city fathers of Brandenburg passed a law that preemptively condemned the Jewish community for spreading the disease. (Zahler, 2009)

Similarly, the new pandemic Covid -19, a barrage of disinformation blaming Muslims for deliberately spreading coronavirus flared up across the country, posing further threat to India’s Muslim minority. (Regan, Sur, & Sud, 2020) The health crisis has provided both motivation and cover for increased persecution of minority faith groups. Muslims in India are facing attacks and boycotts amid the coronavirus crisis. Muslims are being blamed for what some locals are calling “corona jihad.” (Jaiswal, India Covid19 Crisis used to fuel religious hatred, 2020) The Indian administration has also used the pandemic as an opportunity to crack down on political dissidents. Lockdown measures during Covid -19 in the country have also led to the sudden displacement of migrant workers from large urban centers. (Menon G. L., 2020)

3.2.1. Slander campaign against Muslims

Xenophobic tropes are evident from the manner in which the spread of COVID-19 in the country has been framed along religious lines. India’s 201 million Muslim citizens now find themselves blamed for the country’s COVID-19 outbreak. Many Muslims have also been reportedly turned away from testing centres and health clinics due to such fears. (Ketchell, 2020)

A congregation had taken place in the headquarter of Tablighi Jamat⁴ (Ahmed, 2020) at New Delhi in March 3rd, 2020, drawing hundreds (1,306) of foreign nationals from 41 countries such as Thailand, Nepal, Myanmar, Indonesia, Bangladesh, Malaysia, Sri Lanka and Kyrgyzstan. As the COVID-19 lockdown came into force on 25 March 2020, that time around 1,000 were left stranded in its headquarter at New Delhi. (IANS, 2020)

The Indian government has been criticized for its poor preparation for the nationwide lockdown imposed in March 25, 2020, and instead turned all its attention toward the three-day Tablighi Jamaat⁵ gathering held in Delhi in early March that has been vilified on local media and social media outlets. The right-wing nationalists have deemed the meeting a sinister plot by Indian Muslims to deliberately infect the rest of the population instead of the virus spreading organically across the country. (Desai & Amarasingam, 2020) The Tablighi Jamaat congregation became the ultimate punching bag of the right-wing agenda. Members of the ruling party such as Chief Minister of Uttar Pradesh (The Economic Times, 2020) and Health Minister of Assam and many have made biased comments against Tablighi Jamat and muslim in general. They are smelling Corona Jihad behind all this” in reference to the gathering. (The Hindu, 2020). The event has been linked to 1,023 cases across 17 states - believed to have been spread by infected foreign attendees. The search for scapegoats during the coronavirus pandemic has focused squarely on the country’s sizable Muslim minority, a community of 200 million that felt under threat even before the advent of covid-19. (Slater & Masih, 2020)

Speaking at a press conference, Joint Secretary in the Health Ministry said 4,291 or about 30% of Coronavirus cases in the country have been traced to Tablighi Jamaat congregation in Delhi out of 14,378 cases in the country. In Delhi, 63% of the reported 1,707 cases are linked to the same gathering. (The Wire, 2020)

On 2 April, the Home Ministry identified 960 foreigners who took part in the event and blacklisted their visas for violation of The Foreigners Act, 1946 (by violating visa norms by entering India with a tourist visa and indulging illegally in missionary work) and the Disaster Management Act, 2005, and asked the Director General Police of respective states and union territories to initiate legal action against them. (India Today, 2020). Over 3000 members of the Tablighi Jamaat subsequently spent more than 40 days in quarantine, with government authorities refusing to discharge them. (PTI, 2020) The Indian government leveled charges of culpable homicide at Tablighi Jamaat chief. (Bhardwaj, 2020)

The Tablighi Jamaat phase saw hate speech directed against one entire community-Muslims-with obvious impact on the ground such as calls for economic and social boycott and physical violence against Muslims. In some instances, hate speech in this period was clear incitement to genocide and sought to reduce Muslims to second-class citizenship. (Menon S. , 2020)

3.2.2. Attacks on Muslims and Segregation

The government administration blocked Muslim vegetable vendors from selling their produce. Many Muslims were barred from entering the hospital before taking the corona test. Muslims all across India were attacked in the name of the COVID-19 surge. (Menon A. , 2020) Tamil Nadu became the first Indian state to set up detention centers for 129 foreign nationals who had stayed in Tablighi Center at New Delhi. All cases were based on anti-Muslim sentiments rather than facts or evidence. (The Wire, 2020)

In the Una district in Himachal Pradesh, a man hanged himself due to taunts from fellow villagers for having come in contact with Tablighi Jamaat missionaries. (Mohan L. , 2020) Several truckers belonging to the Muslim community were allegedly beaten up in Arunachal Pradesh, following which they fled to neighboring Assam, leaving their vehicles behind, on 5 April 2020. (PTI, 2020) A Muslim man in Delhi was beaten up by a mob that accused him of spreading coronavirus. (Petersen & Rahman, 2020) Both private and government-run hospitals have been accused of providing Muslim COVID-19 patients with lower-quality care. In Gujarat, a government hospital is placing Muslim and Hindu coronavirus patients in separate wards, prompting accusations of apartheid. (The Hindu, 2020) A bakery owner in the southern city of Chennai advertised that it did not employ any Muslims.

3.2.3. Rumors and misinformation on media

Mainstream Indian media propagated a conspiracy of Muslims deliberately spreading coronavirus called “Corona Jihad”. This went viral on social media. Human rights watch condemned this Islamophobic campaign. (Bajoria, 2020)

The Star of Mysore newspaper went to incite genocide/ethnic cleansing of Muslims in India. The hate speech was soon followed by calls from across the country for Muslims’ social and economic boycott. (Afeef, 2020) This hate speech is then supplemented with fake news and tangible action in terms of direct attacks on Muslim relief volunteers and socio-economic boycott of Muslims in public spaces. Divisive debates on television and xenophobic social media trends and hashtags have added fuel to the fire.

3.3. *Supreme Court intervention*

The Jamiat Ulema-Hind had filed a petition in the Supreme court drawing attention to the fake news blaming the community for the spike in COVID infection. The court was dealing with a petition complaining of how TV channels had demonized the Tablighi Jamaat amid the corona lockdown. (Rautya, 2020)

A bench headed by Chief Justice of India, which was hearing pleas of Jamaat Ulama- Hind and others alleging that a section of media was spreading communal hatred over Tablighi Jamaat congregation during the onset of COVID-19 pandemic, pulled up the Centre for its “evasive” and “brazen” affidavit on the issue. News channels have misused the right to free speech, Chief Justice of India has asked the Centre to explain if it had taken any steps to curb the trend. “Freedom of speech is one of the most abused rights in recent times,” the CJI said. (Rautray, 2020)

3.3.1. Judicial Proceedings

The court had on August 24 framed charges against the foreigners under sections 188 (disobedience to order duly promulgated by public servant), 269 (negligent act likely to spread infection of disease dangerous to life) of the Indian Penal Code, and Section 3 (disobeying regulation) of Epidemic Act, 1897. (Mohan A. , 2020) Dozens of cases were filed against the non-Indian Tablighi Jamaat members by various Indian states, and hundreds of them were blacklisted from traveling to India for 10 years. (Kuchay, 2020) Several countries have expressed concern over the continued custody of their national and has become a diplomatic headache for the government. (Haidar, 2020)

On 15 December 2020, the court of Chief Metropolitan Magistrate, Delhi, dismissed all cases against detained foreigners observing utter lack of evidence. Court noted that the accused were not present at the site and were picked up from different places and maliciously prosecuted under the directions of controversial order from the ministry of home affairs. (Haidar, 2020)

Criminal justice has its own logic at present and its discrepancies are not matching with the democratic ethos of India's secular constitution. Relief and rehabilitation are another sore point after the violence and our society needs serious introspection. The biases and hate against minorities do seem to have seriously distorted the justice delivery system. (Punniyani, 7 March 2022)

4. **The Issue of Hijab and online Sexual Violence against Muslim Women**

In a recent incident in Karnataka, India, which sparked a debate, female students were not permitted to enter the class. In a government-run college in Udupi, Karnataka, India, seven female students were denied access to classes because of wearing hijab. (Qureshi, 2022)

The freedom to practice one’s religion is a fundamental right granted by India’s constitution, with certain limitations. Wearing Hijab is a constitutional Right Under Art. 14 & 25 Of the Indian Constitution. Article 25(1)

of the Constitution says that there is a “Freedom of conscience and the right to freely profess, practice, and propagate religion.” But like any other fundamental right, this also is not fixed. It can be regulated on the basis of other fundamental rights granted by the Constitution. (Bhiwgade, 2020)

The Supreme Court has ruled that the Constitution will exclusively protect “essential religious practices.” Before granting any protections, courts will evaluate whether a practice is vital or integral for religion after studying religious texts and consulting the experts and religious heads. Courts will also consider the reasonableness of the restrictive measure in question while determining the legitimacy of any restriction put on fundamental rights under the provision of Article 14 (right to equality).

The Kerala high court considered the question of hijab is an essential religious practice in *Amnah Bint Basheer vs. Central Board of Secondary Education*, wherein the prescribed dress code for All India Pre-Medical Entrance Test-2016 was challenged by petitioners. The rationale for prescribing a dress code by the Board is to avoid malpractices in the examination.

The court relied on chapter 33 of the Quran, which holds:

“O Prophet, tell your wives and your daughters and the women of the believers to lower over them a portion of their jilbabs. That is more suitable that they will be known and not be harmed. And even Allah Forgiving and Merciful.”

A ban on hijabs is contrary to almost every fundamental right that the constitution of India guarantees to all its citizens. It flies in the face of the right to freedom and equality. Refusing permission to hijab-wearing girls to enter school premises is a direct violation of cultural and educational rights. Article 29 of the constitution grants citizens who have a different language, script, and culture, the right to conserve and develop the same. (Pasha, 2022)

4.1. Online Sexual Violence

India’s radical Hindu nationalists have unleashed a vicious online onslaught targeting Muslim women that is laced with sexual slurs, rape threats, explicit imagery and malicious objectification. Most of the women on the receiving end of this Islamophobic and misogynistic bullying. (Taskin, 2022) Over the New Year’s weekend, photographs of more than 100 Muslim women with their identities appeared on a fake auction app that listed them “for sale” with the phrase “Your Bulli Bai of the day is.” (Arya & Khare, 2022) It urged users to bid on the women in a fake auction. *Bulli bai* is a derogatory Hindi term that right-wing Hindu nationalists use for Muslim women. The women listed on the app included journalists, activists, film stars and artists as well as the aged mother of a missing Indian student. (Jafri & Aafaq, 2021) This is not the first time Muslim women in India have been “auctioned off” on the internet. A similar web application named Sulli Deals was placed on Github in July 2021 and remained available for weeks before being taken down. *Sulli* is also an insulting term used for Muslim women. In August 2018, the Akhil Bhartiya Hindu Yuva Morcha, a Hindutva organisation, announced a reward to any Hindu man who married a Muslim woman. In the same year, militant Hindu organisation Vishwa Hindu Parishad called on Hindu men to marry Muslim women and convert them. (Zargar, 2022)

The origins of Muslim women’s sexualisation can be linked to Hindutva ideologues’ ethnocentric and Islamophobic doctrine that sought to project Muslim men and women as aggressors. The Hindutva ideologue and revered by BJP Veer Savarkar justified rape as a legitimate political tool in his book ‘Six Glorious Epochs of Indian History’, (Para 451-455), which he wrote in Marathi a few years before his death in 1966. (Varma, 2018)

Conclusion

The Union government were silent on violence against minorities and allowed hate speech. (Varma, 2018) Even during COVID -19 pandemic, the search for scapegoats has focused squarely on the country’s sizable minority, a community of 200 million that felt under threat even before the advent of covid-19. (Slater & Masih, 2020) Religious freedom conditions in India experienced a drastic turn downward, with religious minorities under increasing assault; after the re-election of the right-wing government in 2019. (USCIRF, 2020) These measures

by the Hindutava elements is an attempt of ethnic cleansing of Muslims in India towards the conversion of India as Hindu Rashtra (a hindu state). (Devare, 2013)

It is shown that the Muslims of India has been provided the fundamental rights as available to other Indian citizens but over the period of times the government has failed to protect those rights. It was also shown that how after the rise of Bharatiya Janata Party (BJP) to power through elections victories of 2014 and 2019, there has been a clear trend of state-sponsored downgrading of Indian Muslims. Several constitutional provisions and laws fuel anti-minority sentiment, including anti-conversion and cow protection legislation. Communalism is heightened and lynch mobs are set in motion to divide and intimidate the working class and poor society for political reasons, although India is described as a secular and democratic nation.

The Government should enact a special 'witness protection' law to protect the lives of witnesses associated with cases of communal incidents. Across the country, a large number of witnesses turn hostile in courts and conviction rates for communal crimes are low. Therefore, there is a need to create legal provisions for witnesses to feel secure so that justice is not compromised. More effective protection for human rights defenders to be provided by removing the legal obstacles and societal repression undermining their legitimate activities to promote and protect human rights. (Christian Solidarity Worldwide, 2016) Through human rights education, confidence-building measures, and dialogue, tolerance, mutual understanding, and pluralism should be nurtured and fostered.

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¹ Hindutva (transl. Hinduness) is the predominant form of Hindu nationalism in India.

² The Universal Periodic Review (UPR) is a unique process that involves a periodic review of the human rights records of all 193 UN Member States. The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251. This mandated the Council to "undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all State.

³ Hindutva (transl. Hinduness) is the predominant form of Hindu nationalism in India.

⁴ An Islamic reformist movement. The Tablighi Jamaat is an Islamic reformist movement formed in 1927 whose members travel around the world on proselytizing missions. It held a big gathering at its mosque headquarters in Delhi from March 13 to 15, in which members from over 40 countries participated.

⁵ The Tablighi Jamaat is an Islamic reformist movement formed in 1927 whose members travel around the world on proselytizing missions. It held a big gathering at its mosque headquarters in Delhi from March 13 to 15, in which members from over 40 countries participated.