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**Language and Connotation in Contemporary
Hate Speech in India**

Medha Damojipurapu



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Front cover: *The upper section uses an image of doves of peace in flight. It has been there since the start of TOAEP's Occasional Paper Series. From No. 11 onwards in the Series, the lower section of the page shows the ancient wrought ironwork above the entrance of the CILRAP Bottega in Florence, which also serves as the office of TOAEP.*

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Introduction

This Occasional Paper aims to delineate, through concrete examples, the nature of hate speech, hateful expression and violence, directed against Muslims in the name of Hinduism in India. The purpose of this paper is to provide a factual basis to assess the true threat posed by hateful utterances (such as incitement to violence, discrimination or genocide) against minority Muslims in India. While doing so, the paper also attempts to identify overarching themes in the language that constitutes contemporary hate speech against Muslims and provides some reflections on the historical and cultural contexts within which certain stereotypical notions of Indian Muslims developed and which form the basis of much of the hate-filled rhetoric against them today. For the purposes of this paper, the author has confined her analysis to hate speech that has been employed against Muslims in India since 2014, with particular focus on incidents that have transpired since 2020, during the second term of the Bharatiya Janata Party's ('BJP') rule in India.

Hateful utterances and violence against members of the Muslim community in India have been growing rapidly over the recent past, and more so with the development of social media and online modes of transmitting hate speech, which allow the perpetrators to remain anonymous while still having a wide reach in terms of audience and accessibility.

Certain stages in India's history marked the development of ideology that forms the basis of the content of contemporary hate rhetoric against Muslims. The delineation of definite religious identities in India during British colonial rule, the 'divide and rule' policy adopted by the British, and the rise of Hindu nationalism were certain developments that exacerbated the purported distinctiveness between the Hindu and Muslim communities in India, that were hitherto less pronounced or non-existent.

It is alarming to note that in recent times hate rhetoric has triggered large-scale, systematic violence against Muslims in the country. Coupled with impunity from law enforcement authorities and apathy from elected representatives, the result is that India is increasingly becoming a politico-religiously charged environment in which Muslim minorities fear their safety and are often targeted, demonized and ostracized.

This paper seeks to contribute to the discourse on hate speech, hateful expression and violence against Indian Muslims. It is the modest hope of the author that the knowledge generated through this paper will eventually inform attempts to find tools to encourage members of religious communities to refrain from engaging in vocalization and transmission of hate speech in the name of their faiths.

Historical and Cultural Connotations of Language Used

An analysis of the language used in contemporary hate rhetoric against Muslims in the name of Hinduism in India reveals certain underlying themes. In an attempt to break down and understand such hate rhetoric, this author has attempted to analyse the significance and origin of its underlying themes.

2.1. Historical Context

Hinduism is an amorphous religion. The term ‘Hinduism’ was first used by foreigners to refer to what they *perceived* as the indigenous religion of India.¹ The use of the terms ‘Hindu’ and ‘Hinduism’ to denote the indigenous religion of India is, therefore, a recent development and one that has been conferred on Hindus externally. As renowned historian Romila Thapar has pointed out, the first use of the term ‘Hindu’ is as a *geographical* nomenclature.² The term ‘Hindu’ originally was the Indo-Aryan word for ‘river’, and as a proper noun, it referred to the great river on the north-west of the sub-continent, that is, the Indus River, also known as the Sindh River (which now lies in the territory of Pakistan). The term ‘Hindu’ therefore was used to refer to the inhabitants of the lands beyond the Indus.

It is important to note that in pre-modern times in India, various religious sects co-existed, each having its own unique deity, rituals and practices, scriptures, etc. Hinduism as it is called in contemporary parlance comprised of these numerous religious sects, rather than a formal, singular religion.³ Caste formed the basic unit of organization of Indian society and in turn shaped and structured religion. Therefore, the term ‘Hinduism’ used by the British was an umbrella term which subsumed the multiplicity of beliefs, practices, and doctrines that had evolved over time. Foreigners were often confounded by Hinduism, especially since unlike other world religions,

the evolution of Hinduism is not a linear progression from a founder through an organizational system, with sects branching

¹ Shashi Tharoor, *Why I Am a Hindu*, Aleph Book Company, 2018, p. 4.

² Romila Thapar, *The Past as Present: Forging Contemporary Identities Through History*, Aleph Book Company, 2014, p. 119.

³ *Ibid.*, pp. 138-140.

off. It is rather the mosaic of distinct cults, deities, sects and ideas and the adjusting, juxtaposing, or distancing of these to existing ones, the placement drawing not only on belief and ideas but also on the socio-economic reality.⁴

On the other hand, religions such as Islam, Christianity, Buddhism and Jainism base their evolution on interpretations of the original teachings of the religion and draw some strength from the structure of an ecclesiastical organization. However, Hindu sects had a distinct and independent origin. The belief systems of each sect were distinct as well. The religion did not conform to “a shared creed, catechism, theology, and ecclesiastical organization”.⁵ In fact, Hinduism is devoid of any rigid dogmas, a singular sacred text, or a single holy religious site or religious temple.

The early interactions between the people of India and those associated with Islam was through various avenues, such as in the form of traders, Sufis and Indian mystics, and attachments to conquerors. Such association pre-dates the invasion by Muslim rulers later on:

For a long while in India, they were referred to by the same terms as were used in earlier times for people from west and central Asia, suggesting that their coming was viewed in part as a historical continuity. And there are good historical grounds to explain such a continuity. The coming of the Europeans and the colonisation of India by Britain, was an altogether different experience. They came from distant lands, were physically different, spoke languages which were entirely alien and in which there had been no prior communication; their rituals, religion and customs were alien; their exploitation of land and labour exceeded that of the previous period; and above all they did not settle in India. The assumption that the west Asian and central Asian interventions after the eighth century A.D. and that of the British were equally foreign to India, in origin and intent, would, from the historical perspective, be difficult to defend.⁶

⁴ Romila Thapar, “Imagined Religious Communities? Ancient History and the Modern Search for a Hindu Identity”, in *Modern Asian Studies*, 1989, vol. 23, no. 2, p. 216.

⁵ *Ibid.*, p. 218.

⁶ Romila Thapar, “The Tyranny of Labels”, in *Social Scientist*, 1996, vol. 24, nos. 9-10, pp. 5-6.

Early followers of Islam who arrived in India were confounded that Indian society at the time lacked the concept of conversion, as one was regarded as being born into one's caste.⁷

Today, Indian Hindus and Muslims are viewed as two distinct communities – a view that has often been projected back into the past.⁸ There are differing accounts as to whether strong religious identities existed in pre-colonial times or if they were crystallised during British rule in India.⁹ Further, there is also disagreement as to whether communal antipathy between these two groups was a result of British colonialism in India, which adopted the cynical policy of 'divide and rule', or whether such rivalry existed prior to British colonization of India.¹⁰ Regardless, the division of the Indian population into discrete religious communities formed a part of the British colonial strategy.¹¹

2.2. The Increasing Prominence of Concrete Religious Identities During the British Colonial Period

The 'First War of Independence' or the 'Revolt of 1857' ('Revolt') was an uprising against the rule of the British East India Company, which functioned as a sovereign power in India, on behalf of the British Crown. The Revolt was sparked by the use of new cartridges by the British army for the Enfield rifle, which Hindus and Muslims believed were greased with pig and cow fat (pigs are considered unclean by Muslims and Hindus consider cows to be holy animals). Loading the cartridge required tearing it open with one's mouth, which offended the religious sentiments of both Muslims and Hindus and sparked the rebellion. As a result of the rebellion, the East India Company's rule over India came to an end and thereafter, the British Crown assumed direct authority over India.

⁷ Thapar, 1989, p. 223, see above note 4.

⁸ Cynthia Talbot, "Inscribing the Other, Inscribing the Self: Hindu-Muslim Identities in Pre-Colonial India", in *Comparative Studies in Society and History*, 1995, vol. 37, no. 4, pp. 692-722.

⁹ Zaheer Babur, "Religious Nationalism, Violence and the Hindutva Movement in India", in *Dialectical Anthropology*, 2000, vol. 25, no. 1, pp. 61-76.

¹⁰ Frederic M. Bennett, "Muslim and Hindu: The Sensitive Areas", *The Atlantic*, February 1958; Ajay Verghese, "Did Hindu-Muslim Conflicts in India Really Start with British Rule?", *Scroll*, 5 June 2018.

¹¹ Babur, 2000, p. 64, see above note 9.

The end of the East India Company's rule heralded a transformation in the British policy in India.¹² The British gave up its annexationist approach and instead focused on appeasing Indian princes to secure their loyalty to the British Crown. The British feared that if any feelings of community and unity developed among the various castes and creeds of India, British rule could be under serious jeopardy.¹³ Several administrative strategies were put in place by the British which in effect categorized people and produced a particular set of political identities in India. For example, a religious dimension to the census was brought in by the British in 1871 and the categories of 'Hindu' and 'Muslim' were created, notwithstanding the fact that in pre-colonial times, identities in India "were multiple and not fixed".¹⁴

The introduction of English as the official language of India and as the medium of higher education also had a significant impact on shaping identity and politics in colonial India. Hindus more readily took to Western education and learning, whereas Muslims, particularly the elite, rejected British ideas and teachings and instead sought to look inwards and revive Islam. Further, the British attitude towards Muslims also had a hand to play in keeping Muslims away from modern education. The British believed that Muslims were more responsible for the Revolt than Hindus and questioned the former's loyalty to the British Crown. Thus, they favoured the recruitment of Hindus to the administrative services. The fact that a far larger number of Hindus had knowledge of Western education than Muslims was an added bonus.¹⁵

Therefore, although the Revolt was unsuccessful, it marked a turning point in the British attitude towards India and set the stage for the delineation of concrete religious identities.

2.3. The Rise of Hindu Nationalism in India

Christian missionaries, established on an increased scale in India after 1813, undertook education and proselytising activities. Several reforms to Hinduism were also undertaken by the British administration such as abolition of certain Hindu customs. In response to these perceived threats, several high-caste Hindus attempted to reform their religion in order to "adapt to Western

¹² Neil Stewart, "Divide and Rule: British Policy in Indian History", in *Science & Society*, 1951, vol. 15, no. 1, pp. 49-57.

¹³ *Ibid.*

¹⁴ P.P. Abdul Razak, "Census Modality and The Making of Muslim Community of Malabar", in *Proceedings of the Indian History Congress*, 2008, vol. 69, pp. 771-780.

¹⁵ Ranbir Vohra, *The Making of India: A Political History*, Routledge, 2013, pp. 99-103.

modernity while preserving the core of Hindu tradition, which they defined mainly in Brahmanical terms”.¹⁶ The Arya Samaj was one such organization founded in 1875 (by Dayanand Sarasvati) which sought to preserve the social order and culture of Hindus while adapting the traditions to take account of Western society. The Arya Samaj was opposed to certain aspects of the Hindu religion such as the caste system and idolatry. However, the movement opposed Christian proselytization and English-Western and Muslim influence over language, culture and education. The genesis of Hindu nationalism was derived from such socio-religious reform movements.¹⁷

Hindu nationalist groups such as the Hindu Mahasabha (earlier known as the Sarvadeshak Hindu Sabha) emerged in the early twentieth century, when India found herself under the oppressive rule of predominantly the British but also the French and the Dutch, to counter what they viewed as “a growing Muslim menace”.¹⁸ The Hindu Sabha was formed by local Arya Samajists in Punjab. In 1906, the All-India Muslim League was formed. At this juncture, the British were anxious to appease the minority Muslims and garner their support, and thus granted them several concessions, such as the setting up of separate electorates in 1909 (the Indian Councils Act, 1909, commonly referred to as the ‘Morley-Minto Reforms’, provided for separate electorates, with seats reserved for Muslims). This kind of discrimination aroused in some Hindus feelings of vulnerability and an inferiority complex.¹⁹ It was in this backdrop that the Hindu Mahasabha was formed in 1915. It was “conceived as an articulation of Hindu assertiveness and strength in reaction to Muslim communitarian organization, presented to Muslim organizations a living proof and justification of their program of separate constituencies”.²⁰

The Hindu nationalist ideology marked the first attempts to organize and mobilize Hindus as a unified group. The ideology of Hindu nationalism was first codified in 1922, when Vinayak Damodar Savarkar published his

¹⁶ Christophe Jaffrelot, *The Hindu Nationalist Movement in India*, Columbia University Press, New York, 1998, p. 14.

¹⁷ *Ibid.*, p. 11.

¹⁸ Manu Bhagavan, “Princely States and the Hindu Imaginary: Exploring the Cartography of Hindu Nationalism in Colonial India”, in *The Journal of Asian Studies*, 2008, vol. 67, no. 3, p. 884.

¹⁹ Jaffrelot, 1998, p. 18, see above note 16.

²⁰ Thomas Blom Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India*, Princeton University Press, Princeton, New Jersey, 1999, p. 77.

polemic titled ‘Hindutva: Who is a Hindu?’, which “perfectly illustrates the mechanisms of Hindu nationalist-identity building through the stigmatisation and emulation of ‘threatening Others’”.²¹

A few years later, Keshav Baliram Hedgewar established the Rashtriya Swayamsevak Sangh (‘RSS’, the ideological counterpart of the present-day ruling political party in India, that is, the BJP). The RSS and the Hindu Mahasabha were sister organizations and stood at the forefront of the Hindu nationalist movement. Another prominent leader of the RSS, Madhavrao Sadashivrao Golwalkar (the protégé of Hedgewar), also espoused some of the ideas that form the basis of contemporary hate speech against Muslims in India. Understanding Savarkar’s work and Golwalkar’s ideas in the early stages of development of Hindu nationalism is important to understanding the kind of rhetoric that is currently used in hateful utterances against Muslims in the name of Hinduism-Hindutva.

²¹ Jaffrelot, 1998, p. 25, see above note 16.

Themes in Contemporary Hate Speech

3.1. ‘Othering’ of Muslims and the Need to Unite Hindus in the Fight against a Common Enemy

The Hindu nationalist ideology was formed in response to what were perceived as the ‘threatening Others’.²² The idea of the Muslim ‘other’, that is now reverberant in right-wing Hindu rhetoric aimed at attacking Indian Muslims, can be traced back to Savarkar’s conceptualization of India as a Hindu land – he called Muslims and Christians “foreign invaders” of India:

Hindutva took to the extreme – or, some would say, to its inevitable conclusion – the liberal idea of primordial “nations” (communities with essential, indivisible master identities) tied strictly to pieces of land, and therefore it was concerned with regenerating an “ancient,” “pure” race by fulfilling its destiny – that is, by reclaiming the race’s rightful homeland and purging it of all “impure” peoples. In this context, Savarkar called Muslims and Christians foreign invaders of a Hindu India. The relationship with Nazism and fascism apparent in this worldview is more than coincidental, as Savarkar and his colleagues were open admirers of Adolf Hitler.²³

The central presumption of Savarkar was that the Aryans who he believed to have settled in India at the dawn of history formed a nation now embodied in the Hindus. Savarkar’s way of defining Hindus was focused not so much on religious homogeneity (which was rather impossible given the complex religious differentiation within Hindu society), but was based on three common characteristics – geographical unity, racial features and a common culture. Savarkar espoused that Hindus were descendants of Aryans, who allegedly first settled on the banks of the river Indus (a theory that is not supported by historical studies).²⁴ Savarkar defined a Hindu as:

²² *Ibid.*, p. 81.

²³ Bhagvan, 2008, p. 885, see above note 18.

²⁴ Jaffrelot, 1998, pp. 26-28, see above note 16.

a person who regards this Land of Bharat Varsha, from the Indus to the Seas as his Fatherland as well as his Holy Land, that is, the cradle land of his religion.²⁵

Thus, this definition not only sought to consolidate Hindu identity but also sought to alienate Muslims and other non-Hindus. A Hindu was one who could identify India as both his Holy Land and his Fatherland, whereas those who followed religions of non-Indian origin had to seek another identity. He explained that:

Hindudom is bound and marked out as a people and a nation by themselves not by the only tie of a common Holyland in which their religion took birth but by the ties of a common culture, a common language, a common history and essentially of a common fatherland as well. It is these two constituents taken together that constitute our Hindutva and distinguish us from any other people in the world. That is why the Japanese and the Chinese, for example, do not and cannot regard themselves as fully identified with the Hindus. Both of them regard our Hindusthan as their Holyland, the land which was the cradle of their religion, but they do not and cannot look upon Hindusthan as their fatherland too. They are our co-religionists; but are not and cannot be our countrymen too. We Hindus are not only co-religionists, but even countrymen of each other.²⁶

According to Savarkar, the term ‘Hindu’ referred to all those people whose religions were born out of the soil of India – as a result, Buddhists, Jains, Sikhs and people belonging to the various Hindu sects would all fall under the umbrella of a ‘Hindu’. This definition seemed to exclude those religious groups – Christians and Muslims – which could potentially pose a political or cultural threat to Hindus. Christians and Muslims were viewed as having “extraterritorial loyalties” and since their “holy land” was outside India, they could not be considered Hindus.²⁷

Golwalkar’s views are best described in the following terms by renowned historian Ramachandra Guha:

Golwalkar saw three principal threats to the formation of a Hindu nation – Muslims, Christians and communists. All three

²⁵ Amalendu Misra, “Savarkar and the Discourse on Islam in Pre-Independent India”, in *Journal of Asian History*, 1999, vol. 33, no. 2, p. 149.

²⁶ Vinayak D. Savarkar, *Hindu Rashtra Darshan*, 1949, p. 5.

²⁷ Hansen, 1999, p. 79, see above note 20.

were foreign in origin, and the last were godless to boot. Golwalkar saw Muslims, Christians and communists as akin to the demons, or rakshasas, of Indian mythology, with the Hindus as the avenging angels who would slay them and thus restore the goodness and purity of the Motherland. The RSS itself was projected by Golwalkar as the chosen vehicle for this national and civilizational renewal of the Hindus.²⁸

In the 1930s, the RSS professed admiration for the policies of the National Socialists of Germany. Parallels can be drawn between the Nazi ideals and Golwalkar's ideas, such as the love for the mystical Motherland (that is, India). Golwalkar espoused a blood and soil kind of nationalism, according to which only Hindus were true lovers of the nation and could restore it to its former glory.²⁹

From Golwalkar's speeches, it is evident that he harboured and propounded the belief that today underlies the idea behind anti-conversion laws, *love jhàd*, and *ghar wapsi* (reconversion programmes) being carried out in India. In his conception, Christians and Muslims are not indigenous to India but have been converted to Christianity and Islam and hence have no love or reverence for India:

They are born in this land, no doubt. But are they true to its salt? Are they grateful towards this land which has brought them up? Do they feel that they are the children of this land and its tradition and that to serve it is their great good fortune? Do they feel it a duty to serve her? No! Together with the change in their faith, gone are the spirit of love and devotion for the nation.

Nor does it end there. They have also developed a feeling of identification with the enemies of this land. They look to foreign lands as their holy places. They call themselves 'Sheikhs' and 'Syeds'. Sheikhs and Syeds are certain clans in Arabia. How then did these people come to feel that they are their descendants? That is because they have cut off all their ancestral national moorings of this land and mentally merged themselves with the aggressors. They still think that they have come here only to conquer and to establish their kingdoms. So we see that it is not merely a case of change of faith, but a change even in

²⁸ Ramachandra Guha, "The Hindu Supremacist: M.S. Golwalkar", in *The Makers of Modern India*, Penguin India, 2012, p. 371.

²⁹ *Ibid.*, p. 372.

national identity. What else is it, if not treason, to join the camp of the enemy leaving their mother-nation in the lurch?

Everybody knows that only a handful of Muslims came here as enemies and invaders. So also only a few foreign Christian missionaries came here. Now the Muslims and Christians have grown in number. They did not grow just by multiplication as in the case of fishes. They converted the local population. We can trace our ancestry to a common source, from where one portion was taken away from the Hindu fold and became Muslim and another became Christian. The rest could not be converted and they have remained as Hindus.³⁰

The Hindu right-wing's purported paranoia over the alleged conspiracy of Muslims to outnumber Hindus and overtake India by creating a Muslim majority can also be traced back to Golwalkar's speeches. He accused Muslims of pursuing an aggressive strategy in two respects – one was to achieve, through direct aggression, the creation of the state of Pakistan, carved out of the motherland of Hindus. The second, he said, was to “increase their numbers in strategic areas of our country. After Kashmir, Assam is their next target. They have been systematically flooding Assam, Tripura and the rest of Bengal since long. It is not because, as some would like us to believe, East Pakistan is in the grip of a famine that people are coming away into Assam and West Bengal. The Pakistani Muslims have been infiltrating into Assam for the past fifteen years”.³¹

3.2. Excessive Use of the Term ‘*Jihād*’

Contemporary hate speech against Muslims in India has seen the evolution of several terms or labels, suffixed by the term ‘*jihād*’. *Jihād* is used loosely and often in hate speech against Muslims in India. It is therefore important to analyse the meaning of this term as well as its modern-day usage.

Jihād is regarded as one of the central duties of a Muslim, however, there is ambiguity as to what this duty precisely entails. The West, and more particularly Americans, have often misconstrued *jihād* to mean ‘holy war’. However, a more accurate translation of the word in Arabic is to ‘struggle’ and the importance of the term is rooted in the Qur’ān’s command to ‘struggle or exert’ oneself in the path of God. The concept encompasses not only

³⁰ Madhav S. Golwalkar, *Bunch of Thoughts*, Vikrama Prakashan, Bangalore, 1966, Part II, Chapter XI, Section “Call to Shake Off Slavery”.

³¹ *Ibid.*

external struggle against enemies of Islam and idolaters (external *jihād* or lesser *jihād*), but also a struggle for self-improvement (internal *jihād* or greater *jihād*). In certain situations, it could also include physically standing up against oppressors in the absence of any alternatives.³² *Jihād* does not preclude the possibility for non-violent resolution of issues.³³

Thus, *jihād* may refer to warfare engaged against non-Muslims but it may also refer to non-violent struggle in the cause of God. Therefore, the use of military force constitutes only one dimension of *jihād*.³⁴ Scholars have noted that the Qur'ān is ambivalent in its attitude towards warfare – while some passages clearly condemn warfare against the weak and declare that believers should only fight in self-defence, some passages appear to provide justification for warfare against non-believers. The meaning of *jihād* evolved over time, depending on the historical predicaments faced by the Muslim community – it unfolded from a pacifist character, to defensive, and thereafter to a belligerent form in order to eliminate idolatry and other immoral practices, as also to spread the influence of Islam.³⁵ The conflicting verses of the Qur'ān and the lack of a central religious authority (the Caliph) make it difficult to delineate the contours of military *jihād*.³⁶

Modern day Islamist movements across the world appear to defend militant *jihād* as their religious duty.³⁷ Such movements usually fall within the ambit of Islamist fringe groups and terrorist organizations who have often adopted the term *jihād* in order to frame their cause and used religious philosophies to justify their actions.³⁸ As a consequence of the use of the term *jihād* in the context of military warfare, the understanding of *jihād* as a religiously sanctioned armed struggle became popular.³⁹ In the second half of

³² Brian Handwerk, “What Does “Jihad” Really Mean to Muslims?”, *National Geographic*, 24 October 2003.

³³ *Ibid.*

³⁴ Onder Bakircioglu, “A Socio-Legal Analysis of the Concept of Jihad”, in *The International and Comparative Law Quarterly*, 2010, vol. 59, no. 2, p. 423.

³⁵ *Ibid.*, p. 433.

³⁶ Bakircioglu, 2010, p. 438, see above note 34.

³⁷ Madeeha Bajwa, “Reconciling Approaches to Terrorism, Militant ‘Jihad’ and Human Rights”, in *Strategic Studies*, 2005, vol. 25, no. 2, pp. 142-168.

³⁸ Handwerk, 24 October 2003, see above note 32.

³⁹ Sebastian Kusserow and Patryk Pawlak, “Understanding Jihad and Jihadism”, *European Parliamentary Research Service* (‘EPRS’), May 2015 (available on the EPRS’ web site).

the twentieth century, several political ideologies developed which based their notions on Islam and over time:

the concept of *jihad* has been used and misused; used by resistance and liberation movements and hijacked and misused by extremist and terrorist organizations to legitimate, recruit, and motivate their followers. The trajectory of jihadist movements has moved from a national to a transnational or global agenda.⁴⁰

In the aftermath of the 11 September 2001 terror attacks in the United States, Western media tended to conflate the distinction between terrorists, Muslims and Arabs. Moreover, Western media is alleged to have played a role in “creating the illusion that all Muslims are radical fundamentalists”.⁴¹ The obsession with using the term *jihād* in hate speech rhetoric against Muslims in India appears to be a combination of three factors: (i) the Hindu right-wing’s need to identify a common enemy against which the Hindu masses could be mobilized and their unity strengthened – this was done through their propaganda of ‘othering’ Muslims and depicting them as foreign to the territory of India and a threat to the safety and existence of Hindus; (ii) the use of the term *jihād* by radical Islamic outfits to describe and justify their militant methods, which can be traced back to the second half of the twentieth century; and (iii) the portrayal of all Muslims as terrorists by the Western media in the aftermath of the 11 September 2001 terror attacks.

This obsession with *jihād* is evident in the use of the term to denote alleged terrorist activity or conspiracy on the part of Indian Muslims. Through this paper, we notice that hate rhetoric in India delineates several modes of so-called *jihād* – *land jihād*, *love jihād*, *corona jihād*, *thook jihād*, *civil services jihād*, and *redi jihād* are examples of terminology developed by Hindu extremists to describe alleged conspiracies being carried out by Muslims against Hindus in India. While *thook jihād* and *corona jihād* are explained in more detail in the next section of this paper, the other terms are worth elucidating here.

Land jihād. – In the context of Legislative Assembly elections in Assam (27 March 2021–6 April 2021), a state in the north-eastern region of India which allegedly has a long history of illegal immigration from neighbouring

⁴⁰ John L. Esposito, “Islam and Political Violence”, in *Religions*, 2015, vol. 6, pp. 1067–1081.

⁴¹ Brendon Tagg, “Jihad, Race and Western Media, Post-September 11”, in *Societies Without Borders*, 2009, vol. 4, no. 3, pp. 317-342.

countries such as Bangladesh, the BJP's election manifesto introduced the concept of '*land jihād*'. *Land jihād* is the allegation that there is an underground conspiracy among Indian Muslims to acquire land across the country, especially in areas that are predominantly Hindu-populated, as a means to "take over the country".⁴² There have been claims of *land jihād* by Muslims in the states of Rajasthan and Uttarakhand as well.⁴³ Assam BJP President Swapnaneel Baruah is quoted as saying that:

Land jihad is a way to force people sell off their lands — it happens anywhere where there are *miyas* (Bengali-origin Muslims in Assam). Cases have been reported from Sorbhog, Dhubri and border immigrant-majority areas.

They corner the land owner, making the land uninhabitable, sometimes by stealing cattle and throwing chopped heads of cattle into courtyards. Ultimately, the owner is forced to sell the land. A third party comes into play and an offer is made to the owner for purchase of the land. A broker gets involved, and the land is captured.⁴⁴

Civil services jihād. – On 11 September 2020, an Indian news channel, Sudarshan News, broadcast a show on "Muslim infiltration" in the Union Public Service Commission ('UPSC') examination, in which it alleged that Muslim aspirants are favoured in the exams by virtue of the provision of several benefits to the exclusion of Hindu aspirants.⁴⁵ Sudarshan News also claimed that there was a sudden increase in the number of Muslims who were clearing the UPSC exams.⁴⁶ While the Supreme Court of India initially refused to issue a pre-broadcast interlocutory injunction against the airing of the show on the basis of an unverified transcript of a promotional clip, after a few episodes of the show were broadcast, the Supreme Court interdicted any further telecast, noting that there had been a "change of circumstances" and that *prima facie* it appeared that the intent, object and purpose of the

⁴² Alishan Jafri, "Is Uttarakhand Government's 'Demographic' Probe of Property Deals a Play on 'Land Jihad' Bogey?", *The Wire*, 5 December 2021.

⁴³ "Now, BJP MLA Claims There is 'Land Jihad' in Rajasthan Town", *The Indian Express*, 18 September 2021.

⁴⁴ Karishma Hasnat, "What is 'land jihad', and why BJP has promised a law against it in Assam election manifesto", *The Print*, 26 March 2021.

⁴⁵ Pooja Chaudhuri, "A List of All the False Claims Made in Sudarshan TV's 'UPSC Jihad' Show", *The Wire*, 24 September 2020.

⁴⁶ "'UPSC Jihad': Sudarshan News Head Claims 'Sudden' Increase in Muslims Clearing Civil Services Exams", *Scroll*, 27 August 2020.

episodes which were telecast was to “vilify the Muslim community. An insidious attempt has been made to insinuate that the community is involved in a conspiracy to infiltrate the civil services”.⁴⁷ The matter is currently *sub-judice*.

Redi jihád. – On 18 June 2021, a Muslim fruit vendor was allegedly brutally beaten up in Uttam Nagar, New Delhi by men chanting “*Jai Shree Ram*” (Glory to Lord Rama). Two days later, Hindutva activists allegedly blocked a main road in the area to protest against what they claimed to be violence and encroachment by *jihádi* fruit vendors. Anti-Muslim slogans were chanted and the activists also allegedly recited the *Hanuman Chalisa* (which is a hymn devoted to Hanuman, a Hindu god).⁴⁸

Thus, the usage of the term *jihád* has now become commonplace in hate speech propagated by Hindus against Muslims, in order to connote alleged conspiracies by Muslims in various forms which pose, in the eyes of right-wing Hindus, a legitimate threat to Hindu interests in India.

It is interesting to note that Hindu right-wing groups have often projected Hinduism as an inherently non-violent religion. However, violence was often accepted as necessary in “certain worldly contexts, especially in the presence of forces which challenged the dharmic order”.⁴⁹

⁴⁷ Supreme Court of India, *Firoz Iqbal Khan v. Union of India and Others*, Order, 15 September 2020, (2021) 2 SCC 591 (<https://www.legal-tools.org/doc/0rs2yz/>).

⁴⁸ Alishan Jafri, “The ‘Hindutva Ecosystem’ Has a New Anti-Muslim Narrative. This Time the Street Vendors are the Target”, *The Wire*, 28 June 2021.

⁴⁹ Ankur Barua, “Encountering Violence in Hindu Universes: Situating the Other on Vedic Horizons”, in *Journal of Religion and Violence*, 2017, vol. 5, no. 1, pp. 49-78.

Language Used

4.1. Protests against the Citizenship (Amendment) Act and the National Register of Citizens

The pogrom in Delhi that occurred between 23-27 February 2020 took place in the backdrop of widespread protests against the passage of the Indian Citizenship (Amendment) Act, 2019 ('CAA'). The CAA was enacted by the Indian Parliament on 11 December 2019. To understand the climate prior to the Delhi pogrom, it is important to trace the incendiary speeches and remarks that were being made from the very beginning of anti-CAA protests in December 2019.

The CAA proposes to provide a pathway to Indian citizenship for illegal immigrants fleeing religious persecution from Pakistan, Bangladesh and Afghanistan. Under the CAA, Hindus, Buddhists, Jains, Christians, Parsis and Sikhs who had migrated to India from the aforementioned three countries prior to 2014 will no longer be considered illegal immigrants and can more readily obtain Indian citizenship through naturalization.⁵⁰ The new law effectively amends India's Citizenship Act, 1955, which requires an applicant to have resided in India for 11 years in order to be eligible for citizenship. The CAA relaxes the requirement to five years. The CAA conspicuously excludes Muslims from the groups that can claim this concession and the reason cited is that Muslims do not comprise a religious minority in the above-mentioned three countries. However, the choice of these countries in particular when Muslims are facing persecution in neighbouring countries such as Myanmar and Sri Lanka, *prima facie* would seem to be otherwise motivated. A law that seeks to create different routes for seeking citizenship on the basis of religion or country of origin is inherently discriminatory:

Parallels have already been drawn with Nazi laws and policies that resulted in the holocaust and genocide of millions in the 1930s and 1940s in German-occupied Europe. The exclusion of Muslim refugees has particularly been a point of denunciation of the new law, especially in a context where Muslims of diverse sects and ethnicities have been subjected to persecution

⁵⁰ India, The Citizenship (Amendment) Act, 2019, 12 December 2019 (<https://www.legal-tools.org/doc/6tus7j/>).

and genocide not just in Sri Lanka, China, and Myanmar but even in Muslim majority nations of Afghanistan, Bangladesh, and Pakistan. The supporters of the law, especially from the government, have frequently (and wrongly) cited these latter set of countries as safe havens for the persecuted Muslims from the region.⁵¹

Demonstrations also ensued in the north-eastern states of India “against the possibility of floodgates getting opened for non-Muslim Hindu refugees who have already settled in these areas over several decades, but especially after the 1947 partition and the 1971 Bangladesh Liberation War”.⁵² The massive protests were fuelled by anxiety over an influx of settlers, with an imagined potential to cause economic, political, and social marginalization and stress on resources brought on by the anticipated demographic change facilitated by the CAA.⁵³ The people of Assam view the CAA as a unilateral violation of the Assam Accord. The Assam Accord, signed by the Government of India, the Government of Assam, the All-Assam Students’ Union and the All Assam Gana Sangram Parishad in 1985, was agreed upon to tackle the issue of illegal immigrants in Assam. The Assam Accord declared that a resident of Assam is an Indian citizen if he or she could prove his presence, or an ancestor’s presence, in Assam prior to 25 March 1971.⁵⁴ As a result of the CAA, the cut-off date of 1971 set by the Assam Accord for the acceptance of illegal immigrants would be rendered ineffective and Assam would have to accept several hundred thousand ‘illegal’ immigrants who entered the country between 1971 and 2014.⁵⁵

Residents from this region are also concerned about the National Register of Citizens (‘NRC’), which is proposed to be a comprehensive list of all Indian citizens. The verification process for the NRC has been conducted in Assam and reports suggest that approximately four million people were

⁵¹ D. Parthasarathy, “Citizenship (Amendment) Act: The Pitfalls of Homogenising Identities in Resistance Narratives”, in *Economic & Political Weekly*, 2020, vol. 55, no. 25.

⁵² *Ibid.*

⁵³ Manavi Kapur, “India’s New Citizenship Act and National Register of Citizens are Both Inspired by “paranoia””, *Quartz India*, 16 December 2019.

⁵⁴ “Explained: What CAA+NRC Means to You”, *The Indian Express*, 25 December 2019.

⁵⁵ Chandan Kumar Sarma and Objha Borah Hazarika, “Anti-CAA Protests and State Response in Assam: Identity Issues Challenge Hindutva-Based Politics”, in *Economic & Political Weekly*, 2020, vol. 55, no. 14.

excluded from the NRC due to lack of proper documentation.⁵⁶ Although a large number of persons who were excluded were Hindus, the effect of the CAA would protect them from deportation, while Muslims would not be extended the same benefit.

The potential consequences of the CAA and the NRC together on Muslims is best explained in legal terms as follows:

The implications are clear: if the government goes ahead with its plan of implementing a nation-wide National Register of Citizens, then those who find themselves excluded from it will be divided into two categories: (predominantly) Muslims, who will now be deemed illegal migrants, and all others, who would have been deemed illegal migrants, but are now immunised by the Citizenship Amendment Bill, if they can show that their country of origin is Afghanistan, Bangladesh or Pakistan.⁵⁷

The combined effect of the CAA and NRC together created panic among Indian Muslims that should they be subject to exclusion from the NRC (due to lack of documentation to prove citizenship or ancestry), they would be rendered “illegal immigrants” and the CAA’s discriminatory provisions would preclude the possibility of obtaining Indian citizenship thereafter.

Protests against the CAA and NRC ensued from mid-December 2019 onwards in various places across the country. Police forces across the country employed excessive force to quell protests, which were largely peaceful, and entered university campuses of Jamia Millia Islamia University (‘Jamia’) in Delhi and Aligarh Muslim University in Uttar Pradesh (both prominent Muslim educational institutions), and subjected students protesting against the CAA to beating and violence using batons and tear gas, and caused the destruction of campus property.⁵⁸ Union Home Minister Amit Shah on 26 December 2019 accused the Aam Aadmi Party (‘AAP’), the ruling party in the National Capital Region of Delhi, of creating confusion over the CAA, stating that “it’s time to teach Delhi’s tukde-tukde gang a lesson

⁵⁶ Angana P. Chatterji, Mihir Desai, Harsh Mander and Abdul Kalam Azad, “Detention, Criminalisation, Statelessness: The Aftermath of Assam’s NRC”, *The Wire*, 9 September 2021.

⁵⁷ Gautam Bhatia, “A Bill that Undercuts Key Constitutional Values”, *The Hindu*, 7 October 2019.

⁵⁸ Sidharth Ravi, “Video of Police Brutality in Jamia Milia Islamia Library Goes Viral”, *The Hindu*, 16 February 2020; “60 AMU Students Injured in Police Violence, University Closed Till January 5”, *The Wire*, 16 December 2019.

and the people should do it”.⁵⁹ By ‘*tukde gang*’ he meant a gang that wants to divide the country.

Following the police crackdown at Jamia, protests against the CAA gained momentum. Several students from Jawaharlal Nehru University (‘JNU’) and Delhi University protested outside the Police Headquarters in ITO, Delhi that same night. Students from universities across the country soon followed suit.

The Shaheen Bagh protest in Delhi was a peaceful sit-in protest started by women on 15 December 2019, which continued for 101 days until 24 March 2020, when the Shaheen Bagh site was cleared by the police in light of the lockdown imposed due to the Covid-19 pandemic.⁶⁰ In conjunction with the incendiary and hateful speeches made by leaders of political parties and Hindu right-wing organizations, there were attempts to intimidate and harm anti-CAA protestors in Delhi – on 30 January 2020, one Rambhakt Gopal fired his gun at protesters at the gates of Jamia, injuring a student. On 1 February 2020, one Kapil Gujar fired two bullets at the Shaheen Bagh protest site, however no one was injured.⁶¹ Despite being surrounded by policemen, Gopal managed to spend approximately two minutes brandishing his pistol before firing it, without any resistance from the police, highlighting breakdown of law and order in the country and complicity of police officials.⁶²

In response to the country-wide protests against the CAA, several members of the BJP and other right-wing organizations made inflammatory speeches against the protestors and threatened them with dire consequences for speaking out against the CAA. At a pro-CAA rally, a local BJP Member of the Legislative Assembly (‘MLA’), Somashekar Reddy, from Bellari district of Karnataka warned that:

It’s just a caution for those who are protesting against the CAA (Citizenship Amendment Act). We are 80 per cent and you (Muslims) are 18 per cent. Imagine what will happen if we take

⁵⁹ “People in Delhi Must Teach ‘Tukde-Tukde’ Gang a Lesson: Amit Shah”, *The Quint*, 26 December 2019.

⁶⁰ “Shaheen Bagh’s 101-day Protest: Timeline of Sit-In Against CAA”, *The Indian Express*, 24 March 2020.

⁶¹ Somya Lakhani, “Delhi: Two Days After Jamia, Firing in Shaheen Bagh as Well”, *The Indian Express*, 2 February 2020.

⁶² Deepshikha Ghosh, “As Teen Pulls Gun at Jamia, Police Watch, Don’t Rush into Action”, *NDTV*, 30 January 2020.

charge [...]. Beware of the majority when you live in this country. This is our country. If you want to live here, you will have to, like the Australian Prime Minister said, follow the country's traditions [...]. So, I warn you that CAA and NRC are made by Modi and Amit Shah. If you will go against these acts, it won't be good [...]. If you wish, you can go to Pakistan. We don't have any issues. Intentionally, we would not send you [...]. If you will act as enemies, we should also react like enemies.⁶³

As evidenced above, the atmosphere in Delhi and other parts of India was already communally charged in the backdrop of anti- and pro-CAA protests. The situation in Delhi was further exacerbated by the prospect of the upcoming Delhi elections.

4.2. Delhi Legislative Assembly Elections of 2020

Just as protests against the CAA gained momentum in many parts of the country, political parties began gearing up and campaigning for the Delhi Legislative Assembly elections, which were scheduled to be held on 8 February 2020. Several speeches with communal and Islamophobic overtones were made in the lead up to the Delhi elections. There was fraught rivalry between the two large political parties vying to take over the Delhi government – the AAP and the BJP.

The violence that took place in Delhi in February 2020 was preceded by mobilization of Hindutva groups spewing hatred against those protesting the passage of the CAA.⁶⁴ Attempts were made to cast the Shaheen Bagh protests in a negative light. Election rallies were used as a battleground to augment anti-Muslim sentiments, with the agenda of stoking communal tensions in the hopes of securing more votes.

The Election Commission of India asked Twitter to take down a tweet posted by Kapil Mishra, BJP member and former MLA, on 23 January 2020, in which he likened the upcoming Delhi elections to an India v. Pakistan match,⁶⁵ and claimed that India and Pakistan (a metaphor for Hindus and Muslims respectively) will fight on the streets of Delhi. In another tweet, he

⁶³ “BJP MLA ‘warns’ anti-CAA protesters, says ‘we are 80% and you just 17%’”, *India TV*, 4 January 2020.

⁶⁴ Sagar, “Delhi Violence Unmasked: Part One”, *The Caravan*, 1 March 2021.

⁶⁵ “Delhi Elections: India vs Pakistan Match on February 8, Tweets BJP Leader Kapil Mishra”, *Scroll*, 23 January 2020.

termed sites where protests against the CAA were taking place as “mini-Pakistans”:

Aam Aadmi Party and Congress have created mini-Pakistans like Shaheen Bagh. In response, Hindustan will face them on February 8. Whenever the anti-nationals create a Pakistan in India, the nationalists’ Hindustan will face them.⁶⁶

Such statements were clearly intended to imply that the ‘enemy’ was Pakistan, that is, anyone who did not support the BJP was a supporter of India’s ultimate enemy, Pakistan.

On 27 January 2020, during a Delhi election rally, BJP Union Minister of State for Finance, Anurag Thakur was caught on camera leading a crowd of BJP supporters who chanted “*goli maro saalon ko*” (shoot the traitors) in response to his shouts “*Desh ke gaddaron ko*” (traitors of the nation).⁶⁷ To put it simply, a Union Minister asked an entire crowd of people gathered at an election rally to shoot at “traitors”. While he did not make any overt references to Muslims, he was evidently referring to anti-CAA protestors, who were predominantly Indian Muslims. The slogan “shoot the traitors” caught on and was thereafter used frequently against anti-CAA protestors across the country.⁶⁸

Shortly thereafter, BJP Member of Parliament (‘MP’) Parvesh Varma stated that the voters in Delhi must carefully choose which government they wanted to elect to power:

Arvind Kejriwal says I am with Shaheen Bagh, the deputy Chief minister Manish Sisodia says I am with Shaheen Bagh. The people of Delhi know the fire that once broke out in Kashmir, where the sisters and daughters of Kashmiri Pandits were raped [...]. The same fire broke out in Uttar Pradesh, in Hyderabad, in Kerala, now the same fire has broken out in a corner of Delhi. Lakhs of people gather there [Shaheen Bagh]. The

⁶⁶ *Ibid.*

⁶⁷ “Order Regarding Removal of Sh. Anurag Thakur and Sh. Parvesh Sahib Singh from the List of Star Campaigners of BJP”, *Election Commission of India*, 29 January 2020; Aishwarya Paliwal, “EC orders BJP to remove Anurag Thakur, Parvesh Sahib from Star Campaigners List for Delhi poll”, *India Today*, 29 January 2020; “Anurag Thakur Leads Crowd to Chant ‘Shoot the Traitors’”, *The Wire*, 27 January 2020.

⁶⁸ “Watch: ‘Goli maaro saalon ko’ Slogans Repeated at Pro-Citizenship Act Rally in Nagpur”, *Scroll*, 22 December 2019; Rohit Khanna, “After Delhi, ‘Goli maaro...’ Slogans Now in Kolkata”, *Times of India*, 2 March 2020; “BJP MLA Abhay Verma Leads East Delhi March with ‘Goli maaro saalo ko’ as Mob Violence Continues”, *Scroll*, 26 February 2020.

people of Delhi will have to carefully and thoughtfully make a decision. These people will enter your homes, they will pick up your sisters and daughters and rape and kill them. Today there is time. Tomorrow Modi ji won't come to save you, Amit Shah won't come to save you. The people of Delhi are safe only till Modi ji is the prime minister of India.⁶⁹

Here, a reference was made to the violence against Kashmiri Pandits (Hindus) during the height of the insurgency in the territory of Indian-administered Kashmir or the erstwhile state of Jammu and Kashmir in the 1990s, suggesting that the same perpetrators were behind the protests at Shaheen Bagh. A peaceful, democratic protest against a discriminatory law made by the Indian Parliament was likened to an insurgency that was carried out by terrorist outfits in Jammu and Kashmir.

On 28 January 2020, in another election campaign conducted by the BJP in Ranhoula village in west Delhi, Parvesh Varma publicly expressed his opposition to anti-CAA protestors, and promised to clear Shaheen Bagh of protestors and to demolish all mosques in his constituency if the BJP came to power.⁷⁰ In light of the outrage sparked by these videos and the complaints filed against those making incendiary speeches, the Election Commission of India ordered the BJP to remove Thakur and Varma from their list of star campaigners.⁷¹

On 29 January 2020, Mr. Tarun Chug, National Secretary of the BJP, referring to the Shaheen Bagh protestors (predominantly Muslim women), who had blocked a main road connecting south-east Delhi to Noida, tweeted that:

We will not let Delhi become Syria and allow them to run an ISIS-like module here, where women and kids are used. They are trying to create fear in the minds of people of Delhi by blocking the main route. We will not let this happen. (We will not let Delhi burn). #ShaheenBaghKaSach.⁷²

⁶⁹ “Shaheen Bagh Protestors will ‘Rape Your Sisters and Daughters’, says BJP MP on Women-Led Protest”, *Scroll*, 28 January 2020.

⁷⁰ “‘Will Remove Shaheen Bagh Protestors, Mosques on State Land’: West Delhi BJP MP Parvesh Verma’s Poll Promise”, *Firstpost*, 28 January 2020.

⁷¹ “ECI Orders Removal of Anurag Thakur, Parvesh Verma from BJP Star Campaigners list”, *The Hindu*, 29 January 2020.

⁷² “Won’t Allow Delhi to Become Syria, says BJP Leader Tarun Chugh on Shaheen Bagh Protest”, *National Herald*, 30 January 2020.

On 2 February 2020, Mr. Ajay Bisht (popularly known as Yogi Adityanath), the Chief Minister of the Indian state of Uttar Pradesh ('U.P.'), addressed two election rallies in Delhi where he attacked BJP's opponent and AAP leader Arvind Kejriwal, accusing him of "feeding biryani" (a traditional Muslim delicacy) to the protestors at Shaheen Bagh and causing anarchy and unrest instead of working for the development of the people of Delhi:

(Arvind) Kejriwal and his mandali (group) are trying to fan unrest and anarchy by tacitly supporting the Shaheen Bagh protests. These protests are nothing but a way for some section of people to show their objections against the scrapping of Article 370 and the construction of Lord Ram's grand temple in Ayodhya.⁷³

Yogi Adityanath was indirectly attacking Indian Muslims, including Kashmiris, who have been protesting against the Indian Government's action of scrapping Article 370 of the Indian Constitution (which provided Jammu and Kashmir with special autonomous status) and the Supreme Court's verdict in *M Siddiq (D) Through Lrs. v. Mahant Suresh Das and Others*⁷⁴ (commonly known as the *Ayodhya* verdict), through which the Court unanimously allowed the construction of a temple by Hindus on the disputed land in question, which Hindus claim to be the birthplace of the Hindu god Lord Rama, while Muslims, who claim to have been worshipping at the site for centuries, were directed to be allotted a separate piece of land. Yogi Adityanath exhorted the people to elect a BJP government in Delhi, which would promote all religions but warned that where "boli" (words) doesn't work, "goli" (bullets) would.⁷⁵

On 5 February 2020, Tejasvi Surya, BJP MP, made Islamophobic statements against the Shaheen Bagh protests:

What is extremely disappointing, what is extremely troubling is that the opposition of this country, knowing fully well that these legislations, especially the citizenship amendment act, have nothing whatsoever to do with taking citizenship away

⁷³ Neelam Pandey and Regina Mihindukulasuriya, "Shaheen Bagh, Biryani, Bullets, Pakistan – What Yogi Adityanath said at Delhi Rallies", *The Print*, 2 February 2020.

⁷⁴ Supreme Court of India, *M Siddiq (D) Through Lrs. V. Mahant Suresh Das and Others*, Judgment, 9 November 2019, (2020) 1 SCC 1 (<https://www.legal-tools.org/doc/7lrgi2/>).

⁷⁵ Neelam Pandey and Regina Mihindukulasuriya, "Shaheen Bagh, Biryani, Bullets, Pakistan – What Yogi Adityanath said at Delhi Rallies", *The Print*, 2 February 2020.

from anyone, has gone around the country indulging in a campaign of lies, campaign of slander, misguiding the people of this country [...] what is happening today in Shaheen Bagh in Delhi is a stark reminder that if the majority of this country is not vigilant, if the patriotic Indians do not stand up to this, the days of Mughal Raj coming back and revisiting Delhi is not very far away. Sir, what is happening in Shaheen Bagh is fanatic Islamism, masquerading in the garb of constitutional secularism. Sir, and therefore we must exercise vigilance to ensure that this country is on the path to true secularism.⁷⁶

4.3. The Delhi Pogrom

Communal violence erupted in Maujpur in north-east Delhi on 23 February 2020 between a Hindu mob and protestors opposing the CAA, which marked the beginning of three days of communal violence. It soon spread to other parts of the city.⁷⁷ The pogrom resulted in 53 deaths (the majority of them Muslims), approximately 250 injured, and around 2,000 displaced.⁷⁸ On the night prior, a group of local Muslim women protesting the CAA had caused a blockade (*'chakka jam'*) on the Jafrabad-Maujpur road in Delhi. In the morning of 23 February 2020, Anupam Pandey, a ward-level president in BJP's Delhi unit, berated the nation's Hindu population in a Facebook post for not rising up against anti-CAA protestors:

Sit in your homes till they block roads to our homes. Shame on 100 crore people!⁷⁹

Through a series of Facebook posts over the rest of the morning, he exhorted his "Hindu brothers" to gather at Maujpur square in as large a number as possible.

Throughout the day, he posted live streams of himself and his party colleagues gathering at Maujpur square. Videos show a gathering of a large number of members from the BJP's several wings, such as the Kisan Morcha (farmer's wing) and the Bharatiya Janta Yuva Morcha (BJP's youth wing) chanting slogans such as "*Hindu Ekta Zindabad*" (Hail Hindu Unity) and

⁷⁶ "'Mughal Raj Not Far Away If...': BJP's Tejaswi Surya on Anti-CAA Protestors", *NDTV*, 5 February 2020.

⁷⁷ "Delhi Violence Unmasked: Part One", 1 March 2021, see above note 64.

⁷⁸ Aiman Khan and Ishita Chakrabarty, "Why the 2020 Violence in Delhi was a Pogrom", *Aljazeera*, 24 February 2021.

⁷⁹ "Delhi Violence Unmasked: Part One", 1 March 2021, see above note 64. A crore is equal to 10 million.

“*Jai Shree Ram*” (Glory to Lord Rama).⁸⁰ Later that evening, Akash Verma, a district executive in BJP’s youth wing, also started a live stream on his Facebook account from Maujpur, where the crowd is seen using communal slurs and abuses to refer to Muslims, such as “mullah” or “katua”. Calls were made encouraging Modi to beat the protestors (“Modiji, *tum latth bajao*”) and for the traitors to be shot (“*Desh ke gaddaron ko, goli maaro saalo ko*”).⁸¹

The important takeaway from these videos and live streams is that the Hindu mob that gathered at Maujpur did not do so spontaneously, rather it was a mob that had been mobilized by Hindu extremists, by using the rhetoric of Hindu unity and the need to protect themselves and defend the country against CAA protestors and thus incited them to commit violence.

On 23 February 2020, Kapil Mishra, took out a pro-CAA protest rally in Jaffrabad, New Delhi, less than a kilometre away from the sit-in protest being led by Muslim women against the CAA.⁸² He urged people through Twitter to gather at the location and “prevent another Shaheen Bagh” protest from taking place. He also issued an ultimatum through a tweet to the Delhi police to clear the roads of anti-CAA protestors.⁸³ He addressed the rally (in the presence of the Deputy Commissioner of Police for north-east Delhi Ved Prakash Surya):

This is what they wanted. This is why they blocked the roads. That’s why a riot-like situation has been created. From our side not a single stone has been pelted. DCP is standing beside us. On behalf of all of you, I am saying that till the time [US President] Trump goes back [from India], we are going to go forward peacefully. But after that, we will not listen to the Police if roads are not cleared after three days. By the time Trump goes, we request the Police to clear out Jafrabad and Chaand Bagh. After that, we will have to come on the roads. Bharat mataki jai! Vande Mataram!⁸⁴

⁸⁰ *Ibid.*

⁸¹ Sagar, “Delhi Violence Unmasked: Part Two”, *The Caravan*, 1 March 2021.

⁸² Delhi Minorities Commission, “Report of the Fact-Finding Committee on the North-East Delhi Riots of February 2020”, p. 30 (‘Delhi Minorities Commission, “Fact-Finding Committee Report 2020”’) (<https://www.legal-tools.org/doc/vbvghc/>).

⁸³ “BJP’s Kapil Mishra has Issued an ‘Ultimatum’ to the Delhi Police. But Who is He?”, *The Wire*, 24 February 2020.

⁸⁴ “Won’t listen after 3 days: Kapil Mishra’s Ultimatum to Delhi Police to Vacate Jafrabad Roads”, *India Today*, 23 February 2020; “Kapil Mishra among these 4 videos Delhi High

Within hours of Kapil Mishra's speech, violence broke out in several parts of north-east Delhi.⁸⁵ His incendiary speeches are widely regarded as the trigger for the violence and bloodshed that ensued in Delhi from 23 to 27 February 2020.⁸⁶ Over the course of these days, Muslims were subject to targeted, organized and systematic violence. Mobs comprising anywhere between 100-1000 persons attacked Muslim individuals, shops, houses, mosques, vehicles and other property, chanting slogans like "*Jai Shree Ram*" (Glory to Lord Rama), "*Modiji, kaat do in Mullon ko*" (Modi, cut these Muslims into pieces), "*Aaj tumhe Azadi denge*" (Today, we will give you freedom).⁸⁷ As per the Delhi Minorities Commission's Fact-Finding Report on Delhi Riots 2020, the violence was not spontaneous but appeared to have been carefully planned, evidenced by the fact that perpetrators positioned themselves strategically in residential areas, they came armed with lathis, iron rods, tear gas cylinders, etc., and specifically targeted people on the basis of their faith (that is, being Muslim), whereas Muslims were not armed with weapons and only engaged in violence in self-defence.⁸⁸ Mobs vandalized Islamic religious symbols such as copies of the Holy Qur'an well as plundered mosques and madrasas, while leaving places of worship of other religions (in the same area) untouched.⁸⁹

Police complacency and complicity in repeated instances of communal violence in India is evidenced by the fact that in several instances communal violence was triggered by the utterance of hateful expressions in public with impunity in the presence of senior police officials. Police officials routinely ignored complaints against BJP leaders and others engaged in leading and luring mobs to commit violence in Delhi.⁹⁰

On 11 March 2020, a 'Group of Intellectuals and Academicians' – which is purported to be a forum for socially-committed professional women but in fact appears to be a bogus, pro-government group, created to support and lend public legitimacy to the activities of the Modi government and the RSS

Court Made Police Watch on Hate Speeches by Politicians", *YouTube*, 27 February 2020 (available on *YouTube*).

⁸⁵ Delhi Minorities Commission, "Fact-Finding Report 2020", p. 33, see above note 82.

⁸⁶ *Ibid.*, p. 99.

⁸⁷ *Ibid.*, p. 100.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, pp. 40-60.

⁹⁰ Prabhjit Singh, "Dead and Buried: Delhi Police Ignored Complaints against Kapil Mishra, Other BJP Leaders for Leading Mobs in Delhi Violence", *The Caravan*, 21 June 2020.

– submitted what it called a fact-finding report on the Delhi pogrom to the Union Home Minister, Amit Shah. The report alleged that:

The Delhi riots are not genocide or a pogrom targeted at any community. They are a tragic outcome of a planned and systematic radicalization of the minorities by a far left-Urban Naxal network operating in universities in Delhi. Both communities have suffered greatly as a consequence. The presence of Jihadi organizations like Popular Front of India (PFI) at dharna sites has been observed.⁹¹

The report further alleged that the riots were caused not because of a pogrom targeted at any particular community but by the “systematic radicalization of the minorities by a far left-Urban-Naxal network operating in universities in Delhi”.⁹² The report claimed that there was evidence of a “Urban-Naxal-Jihadi network that planned and executed the riots”.

On 29 May 2020, another such report titled ‘Delhi Riots: Conspiracy Unraveled’ – Report of Fact-Finding Committee on Riots in North-East Delhi during 23.02.2020 to 26.02.2020’, prepared on behalf of a group called Call for Justice, was submitted to the Union Home Minister. The report alleged that the Delhi riots involved targeted attacks against the Hindu community:

The Hindu community was totally unaware about the attacks while the attackers belonging to the Muslim community meticulously planned not only the manpower and other resources but also the timing as well as the pre-defined targets.⁹³

The allegations made in the two reports above are in stark contrast to the findings of the report by the Delhi Minorities Commission and to the facts evidenced by videos and reports circulated at the time of the Delhi pogrom. It appears that the sole purpose of these two reports is to engage in distortion of facts and the chronology of events during the Delhi pogrom and place the blame for the communal violence in Delhi solely at the doors of the Muslim minority community in India. The distortion of facts and the spread of misinformation, albeit through means that appear *prima facie* legitimate (such as through purportedly reliable fact-finding reports) is another

⁹¹ Group of Intellectuals and Academicians, “Delhi Riots 2020: Report from Ground Zero – The Shaheen Bagh Model in North-East Delhi: From Dharna to Danga”, 2020, p. 1.

⁹² *Ibid.*

⁹³ Call for Justice, “‘Delhi Riots: Conspiracy Unraveled’ – Report of Fact-Finding Committee on Riots in North-East Delhi During 23.02.2020 to 26.02.2020”, 2020, pp. 8-10.

weapon in the BJP's arsenal to spread hatred and distrust against the Indian Muslim community among Hindus and feeds into the already-widespread rhetoric that Hindus are in imminent danger of being attacked and targeted by Muslims.

4.4. Hate Speech and Violence against Kashmiris

The territory of the erstwhile Princely State of Jammu and Kashmir has been a major bone of contention between India and Pakistan, since the time of India's partition in 1947. India and Pakistan have been locked in an international armed conflict over the disputed region for decades and each state occupies a portion of the disputed region. Two of the three wars fought between India and Pakistan were regarding the Kashmir issue.

Indian-administered Kashmir, or the erstwhile state of Jammu and Kashmir, was granted special status and certain autonomies under the Constitution of India. Over the years, this autonomy has been substantially eroded through orders that attempted to bring about Jammu and Kashmir's integration with India and the application of national laws to the region.⁹⁴

An insurgency began in the Kashmir Valley soon after elections took place in 1987 (these elections were widely perceived to have been rigged) and Kashmiri Muslims began a separatist movement from India. The beginning of the insurgency was marked by an incident where the main insurgent organization in Jammu and Kashmir, the Jammu and Kashmir Liberation Front, kidnapped the daughter of the Indian Minister of Home Affairs at the time and used her kidnapping as a bargaining chip to secure the release of members of their group.⁹⁵ The Indian state employed collective repression as a measure of response to the Kashmir insurgency.⁹⁶ The violence that resulted from the insurgency caused a mass exodus of Kashmiri Pandits (Hindus) in the early 1990s, due to a combination of reasons such as selective assassinations and the panic created by the situation.⁹⁷ Since the outbreak of insurgency in 1989, ethnic-stereotypes also emerged wherein the displaced

⁹⁴ Sameer P. Lalwani and Gillian Gayner, "India's Kashmir Conundrum: Before and After the Abrogation of Article 370", *U.S. Institute of Peace*, 2020. See Constitution of India, 26 January 1950, Article 370 (<https://www.legal-tools.org/doc/9ov6kt/>).

⁹⁵ "The Kashmiris' Problem", in *Economic and Political Weekly*, 1989, vol. 24, no. 50, p. 2743.

⁹⁶ Ahsan I. Butt, *Secession and Security: Explaining State Strategy Against Separatists*, Cornell University Press, Ithaca and London, 2017, p. 109.

⁹⁷ Lalwani and Gayner, 2020, see above note 94.

Kashmiri Pandits view Kashmiri Muslims as plunderers and barbarians, whereas Kashmiri Muslims distrust the Kashmiri Pandits.⁹⁸

Although there are different views as to whether Pakistan was responsible for the outbreak of the insurgency itself or whether it merely provided support to the insurgents, the Indian state blamed Pakistan for the insurgency. Pakistan in turn appears to have taken advantage of the situation in Jammu and Kashmir and tacitly supported the separatist movement by providing training, arms, fighters and sanctuary to the insurgents.⁹⁹ The insurgency saw the involvement of some extremist organizations such as the Hijbul Mujahideen (which was supported by Pakistan) and the Lashkar-e-Taiba.¹⁰⁰

The involvement of Pakistan led Indian security forces to respond with greater repression and brutality, harbouring the threat of not only a Kashmiri nationalist movement but also a potential Pakistani invasion. Kashmiris were viewed as a traitorous and disloyal population, “in bed with an enemy state”.¹⁰¹ The origin of such sentiment can also be traced to the Partition in 1947, and the fact that a majority of Kashmiris are Muslim.¹⁰² The religious colouring of the Kashmir insurgency and the state response can be viewed in light of the fact that the Kashmir insurgency coincided in timing with the demolition of the Babri Masjid in Ayodhya and the subsequent communal riots that broke out in Bombay in December 1992. To this day:

India portrays the Kashmiri struggle for self-determination as a fanatical religious movement, a jihad against India – an image that helps project Kashmir as an issue of “terrorism”.¹⁰³

Over the years, India has engaged in serious human rights violations against Kashmiris and given wide powers to armed forces to quell dissent in the region, often by resorting to violence. The human rights violations in Jammu and Kashmir, especially by state authorities, which occurred prior to August 2019 have been widely documented, for example, by the Office of

⁹⁸ Sumit Ganguly, “Explaining the Kashmir Insurgency: Political Mobilization and Institutional Decay”, in *International Security*, 1996, vol. 2, no. 2, pp. 87-88.

⁹⁹ Butt, 2017, p. 115, see above note 96.

¹⁰⁰ *Ibid.*, p. 116.

¹⁰¹ *Ibid.*, p. 118.

¹⁰² *Ibid.*

¹⁰³ Idrisa Pandit, “India is Escalating Kashmir Conflict by Painting it as Terrorism”, *Open Democracy*, 2 December 2019 (available on Open Democracy’s web site).

the United Nations ('UN') High Commissioner for Human Rights ('OHCHR') in its two reports on Kashmir.¹⁰⁴

The situation worsened in August 2019, when the Indian Government abrogated Article 370 (which conferred Jammu and Kashmir with special status) and Article 35A (which empowered the Jammu and Kashmir state legislature to define permanent residents of the territory) of the Constitution of India. The state of Jammu and Kashmir was dissolved and bifurcated into two Union Territories, which means that the Central Government in India retains direct control and authority over both.

In the days and weeks prior to the abrogation, the Indian Government deployed approximately 30,000-40,000 troops of security personnel in Jammu and Kashmir in addition to the 500,000 already present there,¹⁰⁵ abruptly put a stop to the Amarnath Yatra (an annual Hindu pilgrimage), and evacuated tourists under the pretext of anticipated attacks by Pakistan-based militants in the region.¹⁰⁶ Shortly before announcing its decision to abrogate Article 370, the Indian Government imposed an unprecedented communications blackout in Jammu and Kashmir by shutting down access to Internet, mobile and landline services.¹⁰⁷ Further, restrictions were imposed under Section 144 of the Indian Code of Criminal Procedure, 1973, in order to prevent persons from assembling in groups. Thus, the abrogation of Article 370 of the Indian Constitution was accompanied by a curfew, restriction on the freedom to assemble, heavy militarization and a communications blockade which were escalations of events over the preceding year.¹⁰⁸

Several politicians, members of civil society, human rights activists and businessmen were placed under house arrest or detention under the

¹⁰⁴ OHCHR, "Report on the Situation of Human Rights in Kashmir: Developments in the Indian State of Jammu and Kashmir from June 2016 to April 2018, and General Human Rights Concerns in Azad Jammu and Kashmir and Gilgit-Baltistan", 14 June 2018 (<https://www.legal-tools.org/doc/4z0mih/>); OHCHR, "Update of the Situation of Human Rights in Indian-Administered Kashmir and Pakistan-Administered Kashmir from May 2018 to April 2019", 8 July 2019 (<https://www.legal-tools.org/doc/xiskxp/>).

¹⁰⁵ "India jailed thousands in Kashmir crackdown – official data", *TRT World*, 12 September 2019 (available on TRT World's web site).

¹⁰⁶ Claire Parker, "India's Clampdown on Kashmir Continues: Here's What You Need to Know", *The Washington Post*, 13 August 2019.

¹⁰⁷ Sarbani Sharma, "Chicaneries of Power and Subterfuge: Constitutional Laws on Kashmir", *Association for Political and Legal Anthropology*, 5 August 2020.

¹⁰⁸ Anuradha Bhasin Jamwal, "The Inheritance of Loss Progression", *The Caravan*, 5 August 2020.

preventive detention legislation known as the Jammu and Kashmir Public Safety Act, 1978 – “a lawless law”¹⁰⁹ – with approximately 240 persons taken to prisons outside the state.¹¹⁰

Apart from the apparent human-rights violations against Kashmiris, hate speech is often openly used to target Kashmiri Muslims. For example, Vikram Randhawa, a former BJP legislator from the Jammu region, called for violence – “skin them alive” – against Kashmiri Muslims, who allegedly supported the Pakistan cricket team in a match of the T20 World Cup that was held in the United Arab Emirates in 2021.¹¹¹ Further, journalists reporting on-ground realities in Jammu and Kashmir are often targeted for being anti-national and proscribed as terrorists under the severe Unlawful Activities Prevention Act, 1967 (‘UAPA’).¹¹² Soon after the abrogation, Union Minority Affairs Minister Mukhtar Abbas Naqvi commented that separatists and terrorists had turned Kashmir into a “hell of terror” using Article 370 of the Indian Constitution as a shield, and suggested that Article 370’s abrogation would aid in tackling terrorism in the Kashmir Valley.¹¹³

It is worth mentioning here that the recent release of an Indian film depicting the exodus of Kashmiri Pandits from the Kashmir Valley in the 1990s, titled ‘The Kashmir Files’, has resulted in a fresh wave of Islamophobia, distortion of historical facts and demonization of Kashmiri Muslims. The film has been endorsed by Hindu nationalist groups and even Prime Minister Modi himself, and has been allowed tax waivers in several BJP-run states.¹¹⁴ However, viewers are divided in their response to the authenticity of the film. While some laud the film for allegedly portraying a true picture of the violence against and the exodus of Kashmiri Pandits during the height of militancy in Jammu and Kashmir, the Kashmiri Muslim community

¹⁰⁹ “India: A ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act”, *Amnesty International*, 21 March 2011.

¹¹⁰ Ather Zia, Haley Duschinski and Mona Bhan, “A Year of Siege: Politics of Annexation and Settler Colonialism in Kashmir”, *Association for Political and Legal Anthropology*, 30 July 2020.

¹¹¹ Rifat Fareed, “‘Skin Them Alive’: Kashmir BJP Politician Booked for Hate Speech”, *Al Jazeera*, 2 November 2021.

¹¹² Shakir Mir, “Use of UAPA Against Journalists is Last Nail in Coffin for Press Freedom in Kashmir”, *The Wire*, 26 April 2020.

¹¹³ “Kashmir was Turned Into ‘Hell of Terror’ under Article 370: Mukhtar Abbas Naqvi”, *India Today*, 12 October 2019.

¹¹⁴ Umang Poddar, “How the BJP is Promoting ‘The Kashmir Files’: Modi’s Endorsement, Tax Breaks, Leave from Work”, *Scroll*, 17 March 2022.

decried the movie as being “far from the truth” as it failed to show the struggles of the Muslim and the Sikh communities during the militancy in Jammu and Kashmir and of being made with the objective of fanning communal tensions.¹¹⁵ Following the release of the film, there have been reports of genocidal slogans being raised against Muslims at screenings of the film, such as “*goli maaro saalo ko*” (shoot the traitors), “*Bharat Mata ki Jai*” (victory of Mother India) and “*Vande Mataram*” (praise to the Motherland).

In a video clip, one of the viewers is seen requesting the audience not to watch Bollywood movies, especially those starring Muslim actors.¹¹⁶ A Dalit man was allegedly assaulted by a group of eleven people and forced to rub his nose on a temple platform for criticizing the film.¹¹⁷ Evidently, the film has triggered further religious polarization, hate speech and violence in India.

4.5. Tablighi Jamaat and *Corona Jihād*

The Tablighi Jamaat (‘Society of Preachers’) is a revivalist Muslim Organization in India, founded by a Deobandi Islamic scholar Maulana Muhammad Ilyas al-Kandhlawi in 1926. The purpose of the organization is to ‘revive’ Islam, by educating local Muslims about correct Islamic beliefs and practices.

The Tablighi Jamaat holds congregations around the world. One such congregation was held in mid-March in 2020, at the Nizamuddin Markaz in Delhi, the headquarters of the Tablighi Jamaat. Later that month, it was reported that there had been a cluster outbreak of the novel coronavirus at the conference.¹¹⁸ In the weeks and months that followed, news outlets vilified the Tablighi Jamaat for being involved in an alleged conspiracy to spread coronavirus in the country.

From 8 to 15 March 2020, more than two thousand devotees from around the world met at the Nizamuddin Markaz. The meeting continued two days after an order was issued by the Delhi government on 13 March 2020 whereby it directed that “all sports gathering (including IPL [Indian

¹¹⁵ “The Kashmir Files Far from Truth: Omar Abdullah”, *Maktoob Media*, 18 March 2022.

¹¹⁶ “Genocidal Slogans Raised at Kashmir Files Screening”, *Maktoob Media*, 14 March 2022.

¹¹⁷ “Criticism of Kashmir Files, Dalit man assaulted on temple platform”, *Maktoob Media*, 24 March 2022.

¹¹⁸ Vidya Krishnan, “Modi Government’s Targeting of Minorities for COVID Repeats Old Mistakes of HIV Pandemic”, *The Caravan*, 2 May 2020.

Premier League]/conferences/seminars beyond 200 people are prohibited in NCT [National Capital Territory] of Delhi for the purpose of prevention and control of the outbreak of epidemic disease namely COVID-19".¹¹⁹ The order dated 13 March 2020 was vague and appeared to restrict only those gatherings which were related to sports events. Thereafter, the Delhi government issued an order on 16 March 2020 which explicitly imposed restrictions on religious gatherings as well.¹²⁰ By the time the order dated 16 March 2020 had been issued, several of the delegates had begun dispersing across the country while others stayed back at the Nizamuddin Markaz.¹²¹

The Modi government announced a nationwide lockdown on 24 March 2020, by which time several attendees of the Nizamuddin Markaz had moved to different parts of the country to attend smaller gatherings at local mosques. Around 960 foreign nationals were held in quarantine centres in Delhi for months. In some other states such as Uttar Pradesh, Jharkhand, Maharashtra, Karnataka and Tamil Nadu, the attendees were sent straight to jail.¹²² Reports began pouring in that dozens of delegates who had attended the conference had tested positive for the novel coronavirus in various parts of the country.¹²³

On 30 March 2020, the Chief Minister of Delhi, Arvind Kejriwal, ordered the authorities to take legal action against the Markaz administration.¹²⁴ Several states filed First Information Reports ('FIRs') against delegates who had attended the congregation, including many foreigners, and charged them under various sections of the Indian Penal Code 1860 ('IPC'), the Epidemic Diseases Act 1897, the National Disaster Management Act 2005, and the Foreigners Act 1946, for allegedly defying government

¹¹⁹ India, Government of National Capital Territory ('NCT') of Delhi, "Delhi State Health Bulletin for Containment of Covid-19", No.10/13 March 2020 (<https://www.legal-tools.org/doc/wd07w6/>); Aditya Menon, "Covid-19 in Nizamuddin: Who's to Blame – Govt. or Tablighi Jamaat?", *The Quint*, 1 April 2020.

¹²⁰ India, Government of NCT of Delhi, "Delhi State Health Bulletin for Containment of Covid-19", 16 March 2020, no. 13 (<https://www.legal-tools.org/doc/65k10m/>).

¹²¹ Seema Chisthi, "The Nightmare: The Modi Government's Persecution of the Tablighi Jamaat", *The Caravan*, 30 January 2021.

¹²² Sukanya Shantha and Mukul Singh Chauhan, "Tablighi Jamaat: A Year on, Some Attendees Still Await Trial, Others Struggle to Return Home", *The Wire*, 9 March 2021.

¹²³ "The Nightmare: The Modi Government's Persecution of the Tablighi Jamaat", 30 January 2021, see above note 121.

¹²⁴ "Nizamuddin Congregation: Arvind Kejriwal Orders FIR Against Maulana", *India Today*, 30 March 2020.

restrictions and violating visa conditions for entry into India. High Courts of different Indian states later went on to quash few or all of the FIRs.¹²⁵

Republic TV, a far-right news-channel, led by controversial news anchor, Arnab Goswami, took an active part in condemning the Tablighi Jamaat and by extension, the entire Muslim community. On 31 March 2020, for six minutes, Goswami vilified the Tablighi Jamaatis on air:

[T]he Tablighi Jamaat Markaz of Nizamuddin in Delhi has become the biggest coronavirus super-spreader but still the organizers are unrepentant. They have broken every law of this country, they have been spreading hate against the lockdown, and they have told their followers to do everything possible to defy and defeat the national lockdown, and as of now, as of this minute, at least 118 coronavirus positive cases come from this Islamic congregation alone. This Islamic congregation has also at least effectively 3000 corona suspects. All those who broke the lockdown and all those who attended the Tablighi Jamaat Markaz, a congregation of Muslim clerics from 16 countries, many of them coronavirus affected, and 19 states, these people came together and not only did they break the lockdown but they actually asked their followers everywhere to break the lockdown [...] they made fun of our national effort and they used religious teachings to claim that the lockdown announced by Narendra Modi needs to be defeated [...] these are dangerous people, they have compromised us all. We were just winning, when they did everything to defeat us. We will now defeat the lockdown cheats.¹²⁶

He continued:

And where the hell is the PFI (People's Front of India), which chops the hands of people calling them non-believers, promotes terrorism, now has the gall to say that the Tablighi people are being victimized, that this is a systemic failure? Let us tell the PFI tonight that if they also lack the courage to name and shame these corona super-spreaders of the Tablighi Jamaat Markaz, then they have no right to be on Indian soil. The Modi

¹²⁵ “‘Chosen to Make Them Scapegoats’: Bombay HC Quashes FIRs Against Tablighi Jamaat Members”, *The Wire*, 23 August 2020; Arushi Thapar and Zaid Wahidi, “‘Unjust and Unfair’: What Three High Courts Said About the Arrests of Tablighi Jamaat Members”, *Scroll*, 24 August 2020.

¹²⁶ “‘Arnab Goswami’s Lead Story – Markaz Lockdown Violation: How Can One Group Put All at Risk?’”, *Republic World*, 31 March 2020 (available on *YouTube*).

government should initiate draconian steps, unforgiving steps to teach groups like Markaz a lesson, make them pay, destroy their financial base, put huge fines on them, lock up their leadership in jail, but for God's sake, don't let them abuse Indian democracy anymore. The people of India who can't move ambulances in Shaheen Bagh, the suffering citizens of India for months we have seen people dying in traffic jams caused by Shaheen Bagh are now dying because of the singular determination of the Tablighi Jamaat to spread the coronavirus in my country.¹²⁷

The rhetoric used by Arnab Goswami makes it appear as if the members of the Tablighi Jamaat committed a crime of conspiracy against India, when it is in fact unclear whether the Markaz was ever in violation of any of the orders passed by the Delhi Government or the Government of India. Members of the Tablighi Jamaat have been termed "corona suspects", as if to suggest that being infected with the virus was a crime.

Suresh Chavhanke, the head of Sudarshan News, another right-wing news channel, opened his show *Bindaas Bol* on 31 March 2020 with the following statement:

In today's Bindaas Bol, I bring you a very serious issue and appeal to the Narendra Modi government that the Tablighi Jamaat be banned. If India's mosques are posing a threat to Indians, and human bombs carrying coronavirus are roaming around freely, wouldn't you call it 'corona jihad'? We should keenly monitor these jihadis and the jihadis should be strictly punished under law.

In the aftermath of the Tablighi Jamaat congregation, several government officials publicly harped on the congregation as the reason for the spread of the coronavirus in India. While many agree that the holding of the event was irresponsible and endangered many lives, the event, and Muslims in general, received a disproportionate amount of blame and criticism over this incident. The Union Minority Affairs Minister, Mukhtar Abbas Naqvi, who ironically is a Muslim himself, said that the Tablighi Jamaat had committed a "Talibani crime".¹²⁸ Amit Malviya, the national convenor of the BJP's IT cell, tweeted as follows:

¹²⁷ *Ibid.*

¹²⁸ "This is a 'Talibani' Crime by Tablighi Jamaat: Naqvi on Nizamuddin Markaz Gathering", *The Print* (available on *YouTube*).

Delhi's dark underbelly is exploding! Last 3 months have seen an Islamic insurrection of sorts, first in the name of anti-CAA protests from Shaheen Bagh to Jamia, Jaffrabad to Seelampur. And now the illegal gathering of the radical Tablighi Jamaat at the Markaz. It needs a fix!¹²⁹

Another BJP MLA, Sangeeth Som, stated that the manner in which members of the Tablighi Jamaat congregated at the Nizamuddin Markaz despite the warnings given by the government can be termed as “Corona terrorism” – and that the matter should be investigated. Referring to the FIR filed by the Delhi police against Maulana Saad, who led the Tablighi Jamaat congregation in Delhi, and others, he stated that they should be meted out the same punishment as terrorists.¹³⁰ He further stated that members of the Tablighi Jamaat were hiding in mosques in almost every district as part of a larger conspiracy to spread coronavirus across India. It was also suggested that Tablighi members were attempting to spread the virus by spitting and other means, and that this constituted a new type of conspiracy and *jihād*.¹³¹

Karnataka BJP MLA MP Renukachary stated that:

Those who attended Tablighi Jamaat congregation and have not come out for treatment and escaped, government should not protect them. It is not wrong to shoot them with a bullet.¹³²

Such rhetoric contributed to aggravating anti-Muslim sentiment in an already communally charged environment in India. Several Indian news channels spread fake news and misinformation which contributed to the growing Islamophobia and scapegoating of Muslims.¹³³ A video later went viral which allegedly depicted several members of the Jamaat admitted in a Ghaziabad hospital roaming around nude and misbehaving with hospital staff.¹³⁴ When this video was fact-checked, it came to light that the clip was

¹²⁹ Amit Malviya, tweet @amitmalviya, 1 April 2020 (last accessed on 6 June 2022).

¹³⁰ “‘This is Corona Terrorism’, Says BJP’s Sangeet Som over Nizamuddin Markaz”, *ABP Live*, 1 April 2020.

¹³¹ *Ibid.*

¹³² “Not Wrong to Shoot Hiding Tablighi Jamaat Attendees, Says Karnataka BJP MLA”, *News18*, 7 April 2020.

¹³³ Shawn Sebastian, “After Covid-19 Outbreak at Tablighi Jamaat Conference, Fake News Targeting Muslims Abounds”, *The Caravan*, 4 April 2020.

¹³⁴ “Shocking! Tablighi Jamaat Patients Make Vulgar Signs, Roam Naked, Demand Cigarettes in Ghaziabad Hospital”, *ABP Live*, 2 April 2020.

from a video originally shot at a mosque in Pakistan's Karachi in August 2019.¹³⁵

On 4 April 2020, a Hindi daily, *Amar Ujala*, published an article claiming that Jamatis admitted in quarantine centres in Sahranpur district of Uttar Pradesh had demanded non-vegetarian food, threw the food that was served to them and defecated in the open in protest. Similar stories were also reported by another prominent daily called *Patrika*. The Sahranpur police investigated these claims and found them to be untrue. The posts by the two dailies have since been deleted.¹³⁶ Tweets with hashtags such as #BioJihad, #CoronaJihad and #CoronaTerrorism also began flooding Twitter and were shared several times.¹³⁷

An entire set of vocabulary was developed that linked the coronavirus to Muslims in one way or another. Such Islamophobic Covid-19-related hate speech vocabulary and imagery were amplified and circulated by the mainstream media, thereby abandoning norms of unbiased reporting.¹³⁸

4.6. *Thook Jihád*

On 15 November 2021, a video of a Muslim eatery worker from Loni, Ghaziabad, in Uttar Pradesh, was circulated on social media and by right-wing media outlets. The video, which purportedly depicted a Muslim eatery worker spitting into food that he was preparing, was widely circulated using the hashtag #ThookJihad – *thook* literally translates to 'spit'. The video was shot by members of the Hindu Raksha Dal, a far-right group that works closely with the BJP, and is based out of Ghaziabad.¹³⁹

On 16 November 2021, in the Indian news channel News18's show titled '*Desh Nahi Jhukne Denge*', anchor Aman Chopra held a debate over the video wherein he made several Islamophobic statements and contended that this "*riwaaz-e-thook*" (a purported 'tradition of spitting') was a conspiracy

¹³⁵ Jignesh Patel, "Old Video from Pakistan Falsely Viral as Tablighi Jamaat Member Roaming Naked in Isolation Ward", *AltNews*, 8 April 2020.

¹³⁶ *Ibid.*

¹³⁷ Rana Ayyub, "Opinion: Islamophobia Taints India's Response to the Coronavirus", *The Washington Post*, 6 April 2020; Billy Perigo, "It Was Already Dangerous to Be Muslim in India. Then Came the Coronavirus", *Time*, 3 April 2020.

¹³⁸ Equality Labs, "Coronajihad: An Analysis of Covid-19 Hate Speech and Disinformation", 2020 (<https://www.legal-tools.org/doc/99bd0t/>).

¹³⁹ Alishan Jafri, "'Thook Jihad' is the Latest Weapon in Hindutva's Arsenal of Islamophobia", *The Wire*, 20 November 2021.

by Muslim eatery workers against Hindus through the contamination of food.¹⁴⁰ The video and the tweets were later taken down from YouTube and Twitter by the news channel.

In a similar vein, right-wing Hindus targeted Bollywood actor and superstar, Shah Rukh Khan, in relation to a video of him offering prayers at the funeral of a famous Bollywood playback singer, Lata Mangeshkar. For a split second in the video, the actor is seen taking off his mask and bending towards the body to blow air. The gesture of blowing air after reading a *dua* (prayer) is a traditional Islamic practice during funerals, which is intended to ward off evil.¹⁴¹ The act of blowing air after offering prayers was misinterpreted as spitting.

4.7. Targeting Muslim Women

In April 2022, a video was circulated on social media, depicting a Hindu priest clad in saffron robes addressing a gathering in Sitapur, Uttar Pradesh, and threatening to kidnap and publicly rape Muslim women if any Muslim man harasses Hindu girls in the area.¹⁴² The misogyny and humiliation of Muslim women by Hindu extremists has often characterized anti-Muslim hate-rhetoric in India. The sexualization and targeting of Muslim women is a means to silence and oppress them. The environment of impunity when it comes to hate speech, intimidation and violence against Muslims and other minorities in India appears to have encouraged and emboldened hate-mongers engaging in such propaganda. Below are a few examples of hateful expression against Muslim women in India in the recent past.

4.7.1. The *Hijab* Row

Late in December 2021, a group of six Muslim female students wearing a *Hijab* (headscarves worn by many Muslim women) was removed from their class in a pre-university government college in Karnataka's Udupi district,

¹⁴⁰ Meghnad S and Deepanjana Pal, "Bloodlust TV: Aman Chopra Spitting Hate on Minorities with his 'Thook Jihad' Show", *Newslaundry*, 18 November 2021; Alishan Jafri, "'Thook Jihad' is the Latest Weapon in Hindutva's Arsenal of Islamophobia", *The Wire*, 20 November 2021.

¹⁴¹ Nootan Sharma, "Shah Rukh Khan Didn't Spit at Lata Mangeshkar's Funeral. This Is What His Gesture Meant", *The Print*, 7 February 2022.

¹⁴² Alok Pandey, "Hatemonger's Rape Threat to Muslim Women, UP Cop Files Case After 6 Days", *NDTV*, 8 April 2022.

for allegedly being in violation of the dress code.¹⁴³ The students protested against the restriction, filed a writ petition before the High Court of Karnataka and approached the National Human Rights Commission with their grievances.¹⁴⁴ Triggered by the mounting resistance to the restriction on *hijabs*, several Hindu students held counter demonstrations and donned saffron scarves and shawls (the saffron colour is associated with Hindu nationalism), garments not ordinarily worn by them,¹⁴⁵ and called for a *hijab* ban.¹⁴⁶ Many such Hindu students identified themselves as being members of the Akhil Bharatiya Vidyarthi Parishad ('ABVP', the student wing of the BJP) and the Hindu Jagarana Vedike (an organization affiliated to the RSS).¹⁴⁷

Following suit, several other government-run educational institutions in Karnataka banned Muslim female students from wearing the *hijab*.¹⁴⁸ Muslim students who arrived at educational institutions wearing a *hijab* were later allowed entry but made to sit in separate rooms, which evoked concerns regarding segregation.¹⁴⁹ Reports also emerged of Muslim female students wearing the *hijab* being heckled by Hindu men wearing saffron scarves.¹⁵⁰

The admission forms of the six female Muslim students who initially protested against the *hijab* ban, containing their home addresses, telephone numbers and the names of their parents, were allegedly leaked by the college. Following this breach of privacy, the girls allegedly began receiving threatening phone calls and messages.¹⁵¹ In a viral video, an ABVP activist in

¹⁴³ Rushda Fathima Khan, "What's Behind the Escalating Row Over Hijabs in India?", *Al Jazeera*, 15 February 2022.

¹⁴⁴ Mekhala Saran, "Hijab Case Verdict Today: What Did Petitioners Argue? What Did State Say?", *The Quint*, 15 March 2022.

¹⁴⁵ Muhammed Sabith, "'Saffron Controversy, Not Hijab Controversy': Muslim Women Protest Across Karnataka", *The Wire*, 8 February 2022.

¹⁴⁶ "Hijab Ban in Indian State Violates Religious Freedom: US Official", *Al Jazeera*, 12 February 2022.

¹⁴⁷ "Karnataka Hijab Ban: CM Suspends Classes for Three Days", *Maktoob Media*, 8 February 2022.

¹⁴⁸ Muhammed Sabith, "'Saffron Controversy, Not Hijab Controversy': Muslim Women Protest Across Karnataka", *The Wire*, 8 February 2022.

¹⁴⁹ "Udupi: Hijab Wearing Students Allowed into College, Made to Sit in Separate Room", *The Wire*, 7 February 2022.

¹⁵⁰ "Hijab-wearing Student Heckled by Boys Wearing Saffron Scarves in Manday College", *The Hindu*, 8 February 2022.

¹⁵¹ Nikhila Henry, "Karnataka Hijab Row: College Leaks Addresses, Numbers of Protesting Muslim Girls", *The Quint*, 9 February 2022.

Karnataka's Vijayapura is seen calling for genocide against Muslims. In a speech that was delivered publicly and garnered much applause, she stated:

If you want Hijab all over India, we will chop you all into pieces
with Shivaji's sword.¹⁵²

On 15 March 2022, the High Court of Karnataka ruled that wearing the *hijab* is not “essential religious practice” of Islam, but is rather recommendatory. The High Court thus effectively upheld the ban on wearing the *hijab* in educational institutions, stating that the restriction on wearing the *hijab* was in adherence with the school dress code, and hence did not infringe upon the petitioners constitutionally protected right as it applied to all students, regardless of their religious backgrounds.¹⁵³

A Muslim exam invigilator was suspended for wearing a *hijab* to invigilate state-level examinations.¹⁵⁴ The *hijab* ban is the latest in a string of actions that target Muslim religious practices and symbolises the growing intolerance in Indian society. Recently, complaints have also been made about the use of loudspeakers by mosques in order to transmit the *Azaan* (Muslim call to prayer), which happens five times a day.¹⁵⁵ The use of Urdu terms (Urdu is considered a Muslim language) in connection with a Hindu festival (Diwali) in an advertisement also recently caught the ire of right-wing Hindus.¹⁵⁶

4.7.2. Bulli Bai and Sulli Deals Apps

When it comes to the systematic dehumanization and vilification of Indian Muslims, Muslim women bear the additional burden of being sexualized, targeted and humiliated. ‘Bulli Bai’ is an app that came to light on 1 January 2022 on Github, a Microsoft-owned platform for developing and hosting software and open-source projects. Approximately 100 Muslim women’s

¹⁵² Priyanka Rudrappa, “‘Will Cut Them Into Pieces’: ABVP Activist Calls for Genocide against Muslims in Karnataka”, *NewsNine*, 26 February 2022.

¹⁵³ High Court of Karnataka, *Smt. Resham v. State of Karnataka and Others*, Order dated 15 March 2022, Writ Petition No. 2347 of 2022, 15 March 2022 (<https://www.legal-tools.org/doc/n8fjod/>).

¹⁵⁴ “Muslim Invigilator Suspended for Wearing Hijab in Karnataka SSLC Exams”, *Maktoob Media*, 28 March 2022.

¹⁵⁵ “MP: Hindu Right Groups Threaten to Drown Out Azaan with Loudspeaker Music”, *The Wire*, 14 February 2022.

¹⁵⁶ Bilal Kuchay, “Hate Campaign in India Against Urdu for Being a ‘Muslim’ Language”, *Al Jazeera*, 27 October 2021.

profiles and pictures were made available on the web site, including those of prominent women journalists and civil society actors. These profiles, which were created without the consent of the women, were used to invite bids for auction of the women.¹⁵⁷

Six months earlier, in July 2021, another app by the name ‘Sulli Deals’ was developed to auction Muslim women. Both apps were hosted on Github and targeted vocal Muslim women in an attempt to humiliate and degrade them.¹⁵⁸ It is pertinent to mention that both ‘*Sulli*’ and ‘*Bulli*’ are derogatory terms for Muslim women in local slang.¹⁵⁹ They are alterations of the term ‘*Mulli*’, which is often used by the right wing to offend Indian Muslim women.¹⁶⁰

Based on a complaint by journalist Ismat Ara in New Delhi, an FIR was lodged by the Delhi Police’s Cyber Crime Unit against unknown persons, invoking various sections of the IPC, including Section 153A (promoting enmity on grounds of religion) and Section 153B (imputations prejudicial to national integration) for harassing and insulting Muslim women on social media platforms using doctored pictures.¹⁶¹ A complaint was also filed in Mumbai against the app developers. However, women seemed apprehensive that officials would take any action, since the complaints filed against Sulli Deals six months prior had not yet been acted upon.¹⁶²

4.8. Calls to Genocide and Ethnic Cleansing of Muslims

India is witnessing an alarming rise in hateful expression and incitement to violence against minorities, particularly Muslims, in public settings. Few such incidents are highlighted below.

¹⁵⁷ “Bulli Bai: Sulli Deals 2.0? All You Need to Know About the Online ‘Auction’ of Muslim Women”, *Outlook*, 3 January 2022.

¹⁵⁸ Unnati Sharma, “After ‘Sulli Deals’, Now ‘Bulli Bai’ App Lists Muslim Women ‘for Sale’. Delhi Police Lodges FIR”, *The Print*, 2 January 2022.

¹⁵⁹ Srishti Jaiswal, “Bulli Bai: India’s Muslim Women Again Listed on App for ‘Auction’”, *Al Jazeera*, 2 January 2022.

¹⁶⁰ Mariya Salim, “‘Bulli Bai’, ‘Sulli Deals’: On Being Put Up for ‘Auction’ as an Indian Muslim Woman”, *The Wire*, 16 January 2022.

¹⁶¹ “Bulli Bai: India’s Muslim Women Again Listed on App for ‘Auction’”, 2 January 2022, see above note 159.

¹⁶² *Ibid.*; Asmita Bakshi, “Sulli Deals: Indian Muslim Women Offered for Sale in ‘Auction’”, *Al Jazeera*, 12 July 2021.

4.8.1. The 19 December 2021 Event Organized in Delhi by Hindu Right-Wing Groups

One such event calling for violence against Muslims was organized by Hindu right-wing groups, including the Hindu Yuva Vahini, and Sudarshan News Editor-in-Chief Suresh Chavhanke in Delhi on 19 December 2021. In a video recording of the event, Chavhanke and others present at the gathering are seen taking an oath to “fight, die and if required, kill” in order to transform India into a Hindu *Rashtra* (nation) at any cost.¹⁶³ When the chairperson of the Congress (a political party in India) minority cell, Imran Pratapgarhi, condemned the hate speech, Chavhanke responded that Pratapgarhi was one of “those who took the oath of [Mughal Emperor] Aurangzeb”.¹⁶⁴

Aurangzeb Alamgir was the sixth Mughal Emperor of India, who ruled almost the entire Indian subcontinent for a period of approximately 49 years, shortly before British colonialism was established in India. In popular conception, Aurangzeb has been construed as a Hindu-hating bigot, murderer, and a religious zealot. It is popularly believed that Aurangzeb was a brutal oppressor of Hindus, who tried to convert them to Islam and when he failed in his mission, massacred them in millions. Unsurprisingly, Aurangzeb is depicted in popular imagination as a pious Muslim king (which might not always have been the case in reality), which serves a specific purpose:

From a divisive Hindu nationalist perspective, Babur and Aurangzeb are to some degree interchangeable as oppressive Muslim conquerors. In this sense Aurangzeb stands in for an entire category of “orthodox Muslims” who are supposedly implicated in unsavory aspects of India’s past and, consequently, unwelcome in India’s present. It is not incidental that Aurangzeb is widely believed to have been the most pious of the Mughal kings. Aurangzeb thus typifies zealous Muslims overall—both past and present—who allegedly threaten Indian society by virtue of their religiosity. In this formulation Indian and Hindu cultures are collapsed into a single, flattened entity that offers little breathing room for other religious groups.¹⁶⁵

¹⁶³ “In Delhi, Hindutva Groups Vow to ‘Fight, Die & Kill’ to Make India Hindu Rashtra”, *The Quint*, 23 December 2021.

¹⁶⁴ Ayesha Jain, “Delhi Hate Speech: 5 Days Since Vow to ‘Kill’ for Hindu Nation, No Police Action”, *The Quint*, 24 December 2021.

¹⁶⁵ Audrey Truschke, *Aurangzeb: The Life and Legacy of India’s Most Controversial King*, Stanford University Press, 2017, p. 16.

Aurangzeb's characterization as a ruthless and barbaric ruler owes its origin in some part to the British, who engaged in mud-slinging the Mughal emperors, in an attempt to make their colonial project in India appear civilized and acceptable.¹⁶⁶

The colonial-era image and rhetoric regarding Mughal emperors, more particularly that of Babur and Aurangzeb, created by the British, lives on today in Indian society and is often used to character-assassinate and vilify Indian Muslims. For Hindu nationalists, Muslims allegedly pose a threat to India's identity as a fundamentally Hindu nation.¹⁶⁷ Therefore, they engage in likening Indian Muslims to Aurangzeb, who they depict as a reviled and bigoted Islamist tormentor and hater of Hindus. It is also popularly believed that Aurangzeb systematically plundered and destroyed thousands of Hindu temples¹⁶⁸ and hence, posed a threat to Hinduism. Terms like "*Babur ki aulad*" (Babur's progeny) and "*Aurangzeb ki aulad*" (Aurangzeb's progeny) have often been used as terms of abuse against Indian Muslims, especially during the late 1980s and early 1990s, at the time of the demolition of the Babri Masjid in Ayodhya by a right-wing Hindutva mob.¹⁶⁹

4.8.2. The Haridwar Event (*Dharam Sansad Row*)

From 17 to 19 December 2021, a *Dharam Sansad* (religious parliament) was held in Haridwar in the Indian state of Uttarakhand, which saw several Hindu right-wing leaders, monks and activists come together. The *Dharam Sansad* was organized by a militant Hindu priest, Yati Narsinghanand. Yati Narsinghanand, who heads the Dasna Devi temple in Uttar Pradesh, has a history of making Islamophobic hate speeches in public. Much before the Haridwar *Dharam Sansad*, he reacted to the stabbing of militant Hindutva leader Kamlesh Tiwari in Lucknow in October 2019 by threatening to eradicate Islam from India:

Muslims around the world are celebrating because a Hindu lion has been killed and all our homes are in mourning. I am telling every one of those bastards, telling the Muslims, if I don't make you mourn the way Kamlesh Tiwari's house is mourning today,

¹⁶⁶ Audrey Truschke, "A Much-Maligned Mughal", *Aeon*, 5 April 2017 (available on Aeon's web site).

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*; Truschke, 2017, p. 17, see above note 165.

¹⁶⁹ Teesta Setalvad, "We Can't Let Hindu Nationalists Rewrite India's History", *Alternet*, 13 January 2018 (available on Alternet's web site).

then I am not my father's son. As long as I am alive, I will use weapons. I am telling each and every Muslim, we will eradicate Islam from the country one day.¹⁷⁰

Videos of the three-day event revealed that several instances of hate speech, targeted attacks and jibes against the Indian Muslim community were made at this event. The event was attended by around 150 people, including 50 *Mahamandaleshwars* (monks).¹⁷¹ Ex-Delhi BJP spokesperson, Ashwini Upadhyay, was also present at the event. The event soon garnered international attention for its calls for violence amounting to genocide¹⁷² and massacre of Muslims in India.¹⁷³

One of the *Mahamandaleshwars* present at the event, Annapurna Maa, who is also the General Secretary of the Hindu Mahasabha, stated that:

Nothing is possible without weapons. If you want to eliminate their population then kill them. Be ready to kill and be ready to go to jail. Even if 100 of us are ready to kill 20 lakhs of them (Muslims), then we will be victorious, and go to jail [...] Like [Nathuram] Godse, I am ready to be maligned, but I will pick up arms to defend my Hindutva from every demon who is a threat to my religion.¹⁷⁴

Swami Prabodhanand, President of the Hindu Raksha Sena, a Hindutva organization based in Uttarakhand, urged the crowd:

We have to make preparations. And I'll tell you what those preparations are. I will make myself clear, this is the solution, and if you follow this solution, then the path is made for you [...] in Myanmar, Hindus were being chased away. The politicians, government, and police were just standing and watching. They started by killing them by cutting their necks, and not only this, but they began to cut them in the streets and eat them. The

¹⁷⁰ Alishan Jafri, Shehlat Maknoon Wani and Siddharth Vardharajan, "Just Before Delhi Riots, Militant Hindutva Leader Called Repeatedly for Muslims to be Killed", *The Wire*, 3 March 2021.

¹⁷¹ Waquar Hasan, "'Can Kill 20 Lakh of Them': Call for Muslim Genocide at Haridwar Event Attended by 50 Hindu Monks", *Maktoob Media*, 23 December 2021.

¹⁷² "Militant Hindutva Leader Yati Narasinghanand Arrested in 2 Cases, Sent to 14-Day Judicial Custody", *The Wire*, 17 January 2022.

¹⁷³ Dharendra K. Jha, "Unholy Orders: The Haridwar Dharma Sansad is a Reflection of the RSS's New Strategy with Sadhus", *The Caravan*, 1 March 2022.

¹⁷⁴ "'Can Kill 20 Lakh of Them': Call for Muslim Genocide at Haridwar Event Attended by 50 Hindu Monks", 23 December 2021, see above note 171.

people-watching thought we are going to die, we are not going to live.¹⁷⁵

In a video of the event, since deleted, a senior member of the right-wing Hindu Mahasabha political party, Pooja Shakun Pandey, reportedly stated that:

If 100 of us become soldiers and are prepared to kill 2 million (Muslims), then we will win [...] protect India, and make it a Hindu nation.¹⁷⁶

At the same event, in an interview to the right-wing news channel Sudarshan News, Yati Narasinghanand stated that:

This is our second Dharm Sansad. Our message is this that India, which is speedily becoming an Islamic state, should quickly be reversed, and it should become a Sanatan Vedic Rashtra.¹⁷⁷

Yati Narasinghanand led the congregation in taking an oath, where he and the others made a vow to protect their religion:

All of you raise your hands and repeat after me. I, *your name*, here on the banks of the Ganga, I take this vow, for Sanatan Dharm for my family, to keep my sisters and daughters protected. Anything in the world, whatever problems, whatever person, even thinks about causing loss to my religion, my family and my children, my women, I will not let him live. We will live for our religion. We will die for our religion. Islam's jihad will be finished. Long live Sanatan Dharm. May the enemies of Sanatan be destroyed.¹⁷⁸

At the congregation, Narasinghanand also exhorted Hindus to come together to protect Hinduism from the alleged threat of becoming an Islamic state and encouraged his followers to take up violence if necessary to fulfil their duties of protecting their religion. He publicly offered a money reward to any Hindu youth who was willing to come forward and become "Hindu Prabhakaran". Narasinghanand was referring to Velupillai Prabhakaran, the founder and leader of the Liberation Tigers of Tamil Eelam ('LTTE'), an

¹⁷⁵ *Ibid.*

¹⁷⁶ Rhea Mogul and Swati Gupta, "India's Hindu Extremists are Calling for Genocide Against Muslims. Why is Little Being Done to Stop Them?", *CNN*, 15 January 2022.

¹⁷⁷ "Yati Narasinghanand Offers Rs 1 Crore Award to Become 'Hindu Prabhakaran'", *The Wire*, 22 December 2021.

¹⁷⁸ *Ibid.*

armed organization which sought an independent state for Sri Lankan Tamils and is banned in India. LTTE and its leader Prabhakaran were responsible for the assassination of former Prime Minister of India, Rajiv Gandhi.¹⁷⁹ The implications of such a call are serious to say the least – a Hindu priest publicly exhorted fellow Hindus to emulate the activities of an armed, militant organization in their purported quest to protect their religion.

Narasinghanand was later arrested in the *Dharma Sansad* case. Shortly after Narasinghanand was released on bail, he attended events in New Delhi and Una, Himachal Pradesh where anti-Muslim speeches were made, in clear violation of his bail conditions.¹⁸⁰

More than a month after the Haridwar *Dharam Sansad*, the core committee of the Haridwar *Dharam Sansad* held a *Sant Sammelan* (gathering of saints) in Prayagraj, Uttar Pradesh, where the speakers again made hate speeches against Muslims and demanded that India be declared a “Hindu *Rashtra*”.¹⁸¹ They demanded the release of Narasinghanand and Jitendra Tyagi, both of whom had been arrested in connection with the Haridwar *Dharam Sansad*. Swami Anand Swaroop, a Hindu leader, also issued an ultimatum for their release:

Our third demand is that if our religious warriors (Yati Narsinghanand and Jitendra Tyagi) were not released within a week, this campaign will get aggressive. Not just aggressive, the result of it will be horrible. Maybe, the incarceration of these two warriors will cause us to do what Bhagat Singh did to the Assembly (bombing).¹⁸²

Swaroop was referring to the bombing of the Central Legislative Assembly in 1929 by Indian freedom fighter Bhagat Singh in protest against British Rule in India. He also stated that the declaration of India as a secular state was a “constitutional mistake”, one which the Prime Minister (Modi) ought to correct.¹⁸³

¹⁷⁹ *Ibid.*

¹⁸⁰ Alishan Jafri and Naomi Barton, “With Call for Violence Against Muslims at Burari, Yati Narasinghanand Violates Bail Conditions”, *The Wire*, 4 April 2022; “Yati Narasinghanand Violates Bail Conditions Again, Makes Provocative Remarks in Una”, *The Wire*, 18 April 2022.

¹⁸¹ Waqar Hasan, “Declaring India Secular State a ‘Constitutional Mistake’: Hindu Priests at the Prayagraj Sammelan”, *Maktoob Media*, 30 January 2022.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

The Haridwar *Dharam Sansad* is not the first instance in which Yati Narasinghanad has been video-taped engaging in hate speech and incitement against Muslims. In recent times, Narasinghanand has emerged as somewhat of a Hindutva icon.

While addressing a press conference organized by the Akhil Bharatiya Sant Parishad (Ghaziabad) at the Press Club of India in April 2021, Narasinghanand made insulting remarks against the Prophet Mohammad. In a video clip, he is seen addressing the congregation and telling them that:

If the Muslims of the world become aware of the truth about Prophet Mohammad, then they will be embarrassed about being Muslims [...] once Muslims realize that the Prophet they are following was a plunderer, thief and dacoit, that he is a rapist and has engaged in the trafficking of women, [...] they will be ashamed [...]. It is the politicians of India who have glorified the dirty Islam [...]. As long as India's Hindus, who are now in the guise of Muslims, remain in that guise, they will be like animals and their goal would be to take advantage of others' daughters. But when Muslims realize the truth about Islam, they will change [...].¹⁸⁴

In a video circulating on the Internet, he is seen stating that:

[t]he situation today is that Islam's jihadis are killing us in various ways. They are raping our sisters and daughters. In the whole world, there is no one to listen to our voices, because Islamic Jihadis have money and power bestowed on them by politicians. There is no one to listen to our grievances. They are expanding their population as part of a larger conspiracy. It is possible that by 2039, India will have a Muslim Prime Minister.¹⁸⁵

Following the blasphemous remarks made by Narasinghanand at the Press Club of India, AAP MLA and Chairman of the Delhi Wakf Board Amanatullah Khan filed a police complaint against Narasinghanand. An FIR was lodged by the Delhi police against Narasinghanand under Section 153A

¹⁸⁴ "Yati Narsinghanand Saraswati Sparks Another Controversy, Abuses Prophet Muhammad in Press Conference", *The Logical Indian*, 3 April 2021 (available on *YouTube*).

¹⁸⁵ *Ibid.*

(promoting enmity between different groups) and Section 295A (deliberate and malicious acts intended to outrage religious feelings) of the IPC.¹⁸⁶

4.8.3. Hate Speeches Made at Jantar Mantar in Delhi (August 2021)

On 8 August 2021, hate speech and violent slogans were chanted against Muslims at Delhi's Jantar Mantar, a couple of kilometres from the seat of the Indian Parliament. These speeches and slogans were shouted at a public meeting of organizations and supporters which came together as a result of a call made by former BJP spokesperson Ashwini Upadhyay.¹⁸⁷ Videos surfaced online capturing the sloganeering at the event. Uttam Upadhyay, a 26-year-old resident of Ghaziabad, Uttar Pradesh, is seen in the video chanting "*Jai Shri Ram. Mulle kaate jayenge, Ram Ram chilaayenge*" (glory to Lord Rama. Muslims will be cut down while chanting Lord Rama's name).¹⁸⁸ In an interview given to the news media outlet NewsLaundry, Uttam Upadhyay encouraged people to engage in the "economic boycott of Muslims [...] to save the country. Stop buying goods from them. Only then we'll be able to break them".¹⁸⁹ The meeting was also attended by Sushil Tiwari, a member of a group called the Hindu Army, who stated that "*Jo Bharat murdabad kahe, uske seene mein goli ho*" (whoever says "down with India" should have a bullet in their chest).¹⁹⁰ Six persons were later arrested in connection with speeches made at Jantar Mantar.¹⁹¹

4.8.4. Other Speeches Indicating an Intent to Eliminate the Muslim Community in India

Back in 2014, Rajeshwar Singh, head of the Hindu outfit called Dharm Jagran Manch, said that "We have so far ensured 'ghar wapsi' (reconversion)

¹⁸⁶ Ismat Ara, "FIR Filed After AAP MLA's Complaint Against Hardline Dasna Priest for 'Blasphemous' Speech", *The Wire*, 3 April 2021.

¹⁸⁷ Shivangi Saxena, "'Population Jihad Must be Stopped': Meet the Men Who Shouted Anti-Muslim Slogans in Delhi", *NewsLaundry*, 10 August 2021.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ "Communal Sloganeering at Jantar Mantar: BJP's Ashwini Upadhyay Among 6 Arrested by Delhi Police", *India Today*, 10 August 2021.

of three lakh Muslims and Christians back to Hinduism. By 2021, we will finish Islam and Christianity”.¹⁹²

BJP Bihar MLA Haribhushan Thakur told reporters on 25 February 2022 that as “Muslims were given a separate country at the time of Partition in 1947, they should leave for Pakistan. And if they live in India, they should live like second-class citizens. We urge the government to take away Muslims’ voting rights”.¹⁹³

On 5 July 2021, at a *mahapanchayat* (congregation of people) organized by the Vishwa Hindu Parishad (‘VHP’), a Hindu right-wing organization, in Pataudi, Haryana against alleged *love jihád* and religious conversions in the area, a young man allegedly exhorted youth present at the event to “kidnap Muslim women” as revenge for *love jihád* (explained below).¹⁹⁴ At the same event, Suraj Pal Amu, the spokesperson for the Haryana unit of the BJP, stated in his speech, referring to Muslims, that “[t]hey cut their moustaches, we can cut throats [...]. We will pick them (Muslims) off one by one (*chun chun ke thokenge*)”.¹⁹⁵ He continued:

Bharat humari mata hai, aur Pakistan ke hum baap hai, aur yeh Pakistani kutto ko hum ghar kiraye par nahi denge. Inn haramjado ko iss desh se nikalo, yeh prastaav paas hoga (India is our mother, and we are the father of Pakistan, and we will not rent out our houses to these Pakistani dogs. Remove these scoundrels from this country, pass this proposal).¹⁹⁶

4.9. *Love Jihád, Ghar Wapsi* and Religious Conversion Laws in India

The Sangh Parivar (an umbrella term referring to all the Hindu nationalist organizations affiliated to the RSS) has always believed that India belongs to Hindus, and non-Hindus (particularly Christians and Muslims) are outsiders who ought to leave India to the Hindus. Other religious groups such as Jains, Buddhists and Sikhs are believed to come under the larger fold of

¹⁹² “Hindu Outfit Plans to ‘Finish’ Islam, Christianity by 2021”, *The Indian Express*, 19 December 2014. A lakh is equal to 100,000.

¹⁹³ “Hate Speech: Bihar BJP MLA Says Take Away Muslims’ Voting Rights”, *Maktoob Media*, 25 February 2022.

¹⁹⁴ “Teenager Makes Provocative Speech at Pataudi ‘Mahapanchayat’”, *The Hindu*, 5 July 2021.

¹⁹⁵ “After ‘Can Cut Throats’ Speech by Haryana BJP Official, No Police Action”, *NDTV*, 9 July 2021.

¹⁹⁶ Prabhjit Singh, “Muslims Advocate Restraint, Peace, Question Police Amid Haryana ‘Mahapanchayat’ Hate Speeches”, *The Caravan*, 31 July 2021.

Hinduism and hence, exempted from falling under the classification of non-Hindus, while the Parsi community is considered to be too small to be of significance.¹⁹⁷ The term *ghar wapsi* literally translates to homecoming, and refers to the idea of bringing members of other religions (back) into the fold of Hinduism. The idea of *ghar wapsi* thereby reinforces the notion that the minority religions do not belong to the *ghar* or the nation, which belongs exclusively to Hindus.¹⁹⁸ The *ghar wapsi* programme constructs the idea that those belonging to minority religions are prodigal offspring who need only to return to the home to find acceptance.¹⁹⁹ Promoting this programme serves a dual purpose for Hindu nationalists: it serves as a means of dealing with unwanted minorities (and is seen as a more viable alternative to wide-scale mass-killing and ethnic cleansing of minorities), while simultaneously increasing the population of Hindus through conversions.²⁰⁰

The notion of *ghar wapsi* can best be described as follows:

In fact, it is not even acknowledged to be conversion, because it is represented as a form of shuddhi or “purification”, rather than as conversion: as such, members of the minorities are understood to have been defiled by the “other” religion, rather than as belonging to it. They are therefore simply returning to their “true” religion, through *ghar wapsi*; but they do need to be “cleansed off” the other religion, not just converted from it. This speaks volumes about the attitude of the majoritarian community towards the minorities. They are not simply members of another religion, in a neutral, equanimous way; not even just “other” and alien, in some fundamentally irreconcilable, but still broadly neutral way. They are viewed as fundamentally polluting, impure, anathema to the sanctity of the “Hindu”, and actively requiring elimination – hence the need for purification, not just conversion.²⁰¹

The desire to maintain and even substantiate numerical superiority and hence the political power of Hindus in the country is one of the main driving

¹⁹⁷ Prem K. Vijayan and Karen Gabriel, “Hindutva’s Psychological Warfare: The Insidious Agendas of ‘Ghar Wapsi’”, in *Economic and Political Weekly*, 2015, vol. 50, no. 11, pp. 22-24.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*, p. 23.

factors that underlies the *ghar wapsi* programme.²⁰² In reality, *ghar wapsi* programmes across the country have been characterized by intimidation, violence and bloodshed for decades. The goal of these programmes has not been so much as to instil converts (or re-converts, as Hindu nationalists view them) to Hinduism with knowledge about the tenets, scriptures and beliefs of the Hindu religion, but rather to ensure a de-Islamization or de-Christianization of the targeted communities.²⁰³

Love jihád is an example of how love is being weaponized in India and the agency of adult women, especially with respect to choosing their life partners and their religion or faith, is being systematically undermined. According to fringe Hindu groups such as the Shri Ram Sena, the VHP, and the Bajrang Dal, *love jihád* is a looming threat to Hindus. Their theory is that Hindu women are abducted, sexually violated and used by Muslim men to increase their own population and power over Indian society. It is alleged to be a large-scale conspiracy by Muslim men to lure and deceptively marry innocent Hindu women and then force them to have a large number of children, thereby exponentially increasing the population of Muslims in India.

In a documentary made by Al Jazeera, titled ‘Love and Faith in India – 101 East’, the news channel documents a session of a training camp conducted by the Bajrang Dal (a Hindu youth organization with links to the BJP) in Saharanpur, a city in Uttar Pradesh.²⁰⁴ In the words of Kapil Moda, who runs the Bajrang Dal camp: “Love Jihad is a massive conspiracy to turn India into a Muslim country by 2050”.²⁰⁵ The camp run by the Bajrang Dal claims to teach Hindu girls and boys how to protect themselves from *love jihád*. Moda alleges that women are treated as baby-making machines by Muslim men who disguise themselves as Hindus and prey on Hindu girls.

In the interview, Kapil Moda is seen explaining to a group of Hindu boys gathered as a part of the training camp, that Muslims and Christians are scattered in several countries around the world, whereas India is the only country belonging to Hindus. He proclaims that *love jihád* is a conspiracy against the last remaining 900 million Hindus in India. It is this rhetoric that is especially detrimental and amounts to hate speech – it creates panic that

²⁰² Manjari Katju, “The Politics of Ghar Wapsi”, in *Economic and Political Weekly*, 2015, vol. 50, no. 1, pp. 21-24.

²⁰³ *Ibid.*

²⁰⁴ “Love and Faith in India|101 East”, *Al Jazeera*, 27 January 2022 (available on *YouTube*).

²⁰⁵ *Ibid.*

the Hindu population is at risk and under threat of becoming marginalized. One of the attendees, referring to Muslims, stated that “these Taliban-loving traitors should be thrown out of this country”.²⁰⁶

Several public figures have made statements warning Muslims of dire consequences if they engage in *love jihad*. Yogi Adityanath, the Chief Minister of Uttar Pradesh, was caught on video, stating at a rally, that if Muslim men would abduct one Hindu woman, Hindu men would abduct hundred Muslim women in retaliation.²⁰⁷

The case of a 25-year-old Hindu woman named Akhila, who converted to Islam and took a new name, Hadiya, garnered national attention in recent times.²⁰⁸ While Hadiya insisted that she had voluntarily converted to Islam and subsequently married a Muslim man, Shafin Jahan, the High Court of Kerala, on the basis of a petition filed by Hadiya’s father, ordered her confinement in her father’s home and annulled her marriage.²⁰⁹ The matter reached the Supreme Court of India, which eventually recognized her agency and reversed the orders of the High Court.²¹⁰

In October 2020, an advertisement by a popular Indian jewellery brand, *Tanishq*, faced immense backlash from the Hindu right-wing for depicting an interfaith marriage and allegedly promoting *love jihad*. The advertisement featured a baby shower being organized for a Hindu bride by her Muslim in-laws.²¹¹ The advertisement was taken down by the jewellery brand, which cited “hurt sentiments” and safety of its employees as the reasons for doing so.²¹² Several advertisements have, over the last few years, faced criticism for depicting Hindu-Muslim unity.²¹³

²⁰⁶ *Ibid.*

²⁰⁷ “Love Jihad: BJP’s Yogi Adityanath Hate Speech Caught on Camera”, *NewsExpress*, 27 August 2014 (available on *YouTube*).

²⁰⁸ Rahul Bhatia, “The Year of Love Jihad in India”, *The New Yorker*, 31 December 2017.

²⁰⁹ “A Welcome Quietus: On Hadiya Case Verdict”, *The Hindu*, 12 March 2018 (available on The Hindu’s web site); High Court of Kerala, *Asokan K.M. v. The Superintendent of Police*, Judgement, 24 May 2017, Writ Petition (Criminal) No. 297 of 2016 (S) (<https://www.legal-tools.org/doc/ztjrey/>).

²¹⁰ Supreme Court of India, *Shafin Jahan v. Asokan K.M.*, Judgement, 9 April 2018, Criminal Appeal No. 366 of 2018 (<https://www.legal-tools.org/doc/arikp3/>).

²¹¹ “Tanishq: Jewellery Ad on Interfaith Couple Withdrawn After Outrage”, *BBC*, 13 October 2020.

²¹² *Ibid.*

²¹³ Surbhi Gupta, “Tanishq Pulls Down Ad After Social Media Uproar”, *The Indian Express*, 14 October 2020.

Despite the fact that Article 25 of the Constitution of India protects the right to ‘propagate’ religion,²¹⁴ several states in the country have passed anti-conversion legislations that criminalize religious conversions. Although these legislations are specific to each state, their content and purpose are largely similar. These laws are ironically termed ‘freedom of religion’ laws and intend to prohibit religious conversions that have been brought about through “fraudulent” or “forcible” means or by “allurement” or “inducement”. Odisha was the first Indian state to adopt an anti-conversion law, that is, the Odisha Freedom of Religion Act, 1967. At present, a total of eight out of twenty-nine states in India have passed anti-conversion laws – Odisha, Arunachal Pradesh, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand and Uttarakhand. In December 2021, the Legislative Assembly of the state of Karnataka passed the Karnataka Right to Freedom of Religion Bill 2021.²¹⁵ The Bill is currently pending passage by the Karnataka Legislative Council. In the meantime, the Karnataka government promulgated the Karnataka Protection of Right to Freedom of Religion Ordinance, which has been approved by the Governor of the state, thereby making the provisions of the Bill effective immediately.²¹⁶

The judicial sanction for these laws can be traced back to the Supreme Court’s judgment in *Rev. Stainislaus v. State of Madhya Pradesh* (*‘Rev. Stainislaus’*), in 1977, wherein the Court opined that Article 25 of the Indian Constitution, which deals with freedom of religion, does not include the right to convert someone to another religion.²¹⁷ Article 25 contains two prongs to the freedom of religion – the freedom of conscience and the right to freely profess, practice and propagate religion.²¹⁸ The Court explained its interpretation of the term ‘propagate’ as it appears in Article 25 and made what may be seen as an arbitrary distinction between spreading the tenets of one’s religion and converting another person to one’s religion:

²¹⁴ Constitution of India, Article 25, see above note 94.

²¹⁵ India, Karnataka Legislative Assembly, The Karnataka Protection of Right to Freedom of Religion Bill, 2021, 21 December 2021, LA Bill No. 50 of 2021 (<https://www.legal-tools.org/doc/e4s13w/>).

²¹⁶ “Karnataka Gives Nod to Anti-Conversion Ordinance Day After Christian Team Requests Quashing”, *The Wire*, 18 May 2022.

²¹⁷ Supreme Court of India, *Rev. Stainislaus v. State of Madhya Pradesh*, Judgement, 17 January 1977, (1977) 1 SCC 677 (*‘Rev. Stainislaus’*) (<https://www.legal-tools.org/doc/uc7djo/>).

²¹⁸ Constitution of India, Article 25, see above note 94.

what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.²¹⁹

Despite severe criticism of the Supreme Court's judgment in *Rev. Stainislaus*, for being overly broad and vague and posing the risk of including within the ambit of prohibited conversions even those that have been carried out voluntarily, the judgment holds fort even today. *Rev. Stainislaus* grants legitimacy to anti-conversion laws passed by various states, which are often misused to prohibit inter-faith marriages by claiming that such marriages involve forced conversions, or in other words, *love jihad*.²²⁰ In this manner, anti-conversion laws across the country follow a pattern of legalized discrimination. An analysis of these issues raises an interesting question regarding the threat perception from minority religions that has prompted the passage of anti-conversion laws in India, given the staggering majority that Hindus enjoy in terms of population and demographics.

4.10. Cow Vigilantism in India

India is facing increasing instances of violence against Muslims, in the name of protecting cows, which have long been considered to be holy by Hindus. A few prominent examples of lynching conducted by mobs in the name of cow protection are worth mentioning here.

On 28 September 2015, Mohammed Akhlaq was dragged from his home (the only Muslim home in a locality of Rajputs in Dadri, Uttar Pradesh) and killed by a frenzied mob on the suspicion of consuming and storing cow meat in his home.²²¹ His son was also severely beaten up and wounded during the

²¹⁹ *Rev. Stainislaus*, see above note 217.

²²⁰ "India's Love Jihad Anti-Conversion Laws Aim to Further Oppress Minorities, and It's Working", *The Conversation*, 3 September 2021 (available on The Conversation's web site).

²²¹ Sukrita Baruah and Abhishek Angad, "Dadri Lynching: No Question of Returning Home, Just Hope Case Moves Quickly, Says Akhlaq's Kin", *The Indian Express*, 28 September 2018.

lynching.²²² The lynching came after a local Hindu temple in the area announced that a cow had been slaughtered.²²³ On the topic of Akhlaq's killing, BJP MP Sakshi Maharaj, referring to cows as Hindus' mother, stated that: "We won't remain silent if somebody tries to kill our mother. We are ready to kill and get killed".²²⁴

On 1 April 2017, Pehlu Khan, a 55-year-old man, left his village Nuh in Haryana, to purchase cattle. Later that day, he and his sons were lynched by a mob of men in Alwar, Rajasthan for transporting cattle.²²⁵ On 21 April 2017, a mob brutally attacked five members of a nomad cattle-herding family in Jammu, on the suspicion that they were taking their cattle for slaughter. The victims included a nine-year-old girl child. A video of the incident emerged on social media, where two women are seen begging for mercy while the mob mercilessly beat an elderly man with rods and sticks while chanting slogans, and eventually broke and burnt down the family shelter.²²⁶ One day before Eid in 2017, a 15-year-old boy named Junaid was stabbed to death in a local train in Delhi. Just before the incident, he was mocked for being Muslim and a "beef-eater".²²⁷

The cow has come to be regarded as a sacred animal by most Hindus, especially Brahmins. These claims end up being used by right-wing groups as a means to differentiate against groups that cause harm to the sacred animal, that is, Dalits, Christians and Muslims.²²⁸ However, as American Indologist Wendy Doniger points out in her book 'On Hinduism', early religious texts of Hindus made references to cows as food and the sacrifice of cows was done on the arrival of guests.²²⁹ The practice of refraining from eating cows developed in later texts. As Romila Thapar points out:

²²² Aishwarya S. Iyer, "Dadri Lynching Trial Begins: How Akhlaq's Kin Waited for 5 Years", *The Quint*, 26 March 2021.

²²³ Abhimanyu Kumar, "The Lynching that Changed India", *Al Jazeera*, 5 October 2017.

²²⁴ "BJP MP Sakshi Maharaj Says Ready to Kill and Get Killed for Our Mother, Calls SP's Azam Khan a 'Pakistani'", *News18*, 6 October 2015.

²²⁵ "No One Killed Pehlu Khan", *Maktoob Media*, 14 August 2019.

²²⁶ "Chilling Video Seems to Show How Jammu Cow Vigilantes Brutally Attacked a Family of Nomadic Herders", *Scroll*, 23 April 2017.

²²⁷ Apoorvanand, "What is Behind India's Epidemic of 'Mob Lynching'?", *Al Jazeera*, 6 July 2017.

²²⁸ Mohammed Sinan Siyech and Akanksha Narain, "Beef-related violence in India: An Expression of Islamophobia", in *Islamophobia Studies Journal*, 2018, vol. 4, no. 2, pp. 181-194.

²²⁹ Wendy Doniger, *On Hinduism*, Aleph Book Company, New Delhi, 2013, pp. 502-503.

Eventually it became a matter of status to refrain from eating beef and the prohibition was strengthened by various religious sanctions. Significantly, the prohibition was prevalent among the upper castes.²³⁰

The increasing religious dictates concerning beef and the renunciation of cow meat became a symbol of upward social and economic mobility among Hindus, especially the Brahmins. In later years, Hindus' belief in the sacredness of the cow became a ploy to enable the 'othering' of Muslims and Christians who slaughtered and consumed the animal. Those who 'invaded' the Hindus' homeland, that is, Muslim rulers and British imperialists, consumed beef and hence the cow became a symbol of the fight to protect the homeland from foreign invaders in political and religious movements.²³¹

In modern times, the beef issue has become a serious bone of contention between Hindus and Muslims, resulting in large-scale violence and vigilantism by Hindu right-wing mobs. In India, the term 'beef' usually represents an umbrella term that includes cow meat and meat of buffalo or oxen. In the south Indian state of Kerala and in many north-eastern states, beef forms an integral part of the daily diet. These are also the states that currently do not have a beef ban in place.²³²

Since the BJP came to national power in 2014, there has been a spur in communal rhetoric in the country which has given rise to vigilante groups purportedly acting for the protection of cows, who have perpetrated violence against Muslims and others suspected of consuming, buying or selling beef.²³³ According to a Human Rights Watch ('HRW') report titled 'Violent Cow Protection in India: Vigilante Groups Attack Minorities', between May 2015 and December 2018, at least 44 people, a large majority of them being Muslims, have been killed across 12 Indian states, while approximately 280 people have been injured across the country in cow-related violence.²³⁴ According to the United States Commission on International Religious Freedom ('USCIRF'):

²³⁰ Romila Thapar, *The Penguin History of Early India: From the Origins to 1300*, Penguin Books, London, 2002, p. 115.

²³¹ Siyech and Narain, 2018, pp. 181-194, see above note 228.

²³² Komal Deol, "Cow Protection was a Sensitive Subject in India Even When the Constitution was being Framed", *Scroll*, 7 July 2021.

²³³ "India: Vigilante 'Cow Protection' Groups Attack Minorities", *Human Rights Watch*, 18 February 2019 (<https://www.legal-tools.org/doc/3xy1e1/>).

²³⁴ *Ibid.*

Since the BJP came to power in 2014, there have been over 100 attacks, amounting to over 98 percent of such attacks since 2010. Lynching victims, rather than the perpetrators, are often arrested under these laws.²³⁵

There are several instances of hate speech against those who do not regard the cow as sacred and kill cows for consumption, which are veiled attacks on Dalits, *adivasis*, Muslims and Christians in India:

Muslims can continue to live in this country, but they will have to give up eating beef. The cow is an article of faith here²³⁶

We will hang those who kill cows.²³⁷

I had promised that I will break the hands and legs of those who do not consider cows their mother and kill them.²³⁸

Communal rhetoric around cow protection had also been used by Prime Minister Modi and his aides in the run-up to the 2014 general elections at the national level:

Modi ko matdan, gai ko jeevadan [Vote for Modi, give life to the cow], *BJP ka sandesh, bachegi gai, bachega desh* [BJP's message, the cow will be saved, the country will be saved].²³⁹

Cow protection was one of the key conditions on the basis of which the VHP and the RSS agreed to back Modi as the prime ministerial candidate.²⁴⁰

4.11. Communal Violence at the Time of Ram Navami Celebrations in India (April 2022)

In India, a concerning trend is developing – religious festivals and processions are being used as playgrounds to fuel communal tensions and intolerance to religious practices and customs. This trend places additional onus on the local administration and law enforcement authorities to isolate epicentres

²³⁵ United States Commission on International Religious Freedom, “Annual Report, 2020”, April 2020 (<https://www.legal-tools.org/doc/3o8jz4/>).

²³⁶ Varinder Bhatia and Nirupama Subramanian, “Muslims Can Live in this Country, But Will Have to Give up Eating Beef, Says Haryana CM Manohar Lal Khattar”, *Indian Express*, 16 October 2015.

²³⁷ “Will hang those who kill cow: Chhattisgarh Chief Minister Raman Singh”, *India Today*, 2 April 2017.

²³⁸ Anindita Sanyal, “‘Will Break Limbs of Cow Killers’: Legislator Accused in Muzaffarnagar Case”, *NDTV*, 27 March 2017.

²³⁹ Elizabeth Soumya, “Sacred Cows and Politics of Beef in India”, *Al Jazeera*, 20 April 2014.

²⁴⁰ *Ibid.*

of such violence and contain its spread, a responsibility that local administrations in most states in India have failed to discharge or simply refused to shoulder.

Ram Navami is a Hindu festival that celebrates the birth of Lord Rama, believed to be an incarnation of the Hindu god, Lord Vishnu. Ram Navami celebrations in India in April 2022 were besmirched with incidents of communal violence. In at least six Indian states – Delhi, West Bengal, Gujarat, Jharkhand, Madhya Pradesh and Karnataka – communal clashes broke out during processions being carried out to celebrate Ram Navami. It was reported that in Gujarat, Hindus celebrating the festival led processions into Muslim-dominated areas and allegedly hurled slurs at local Muslims, accusing them of mocking the Ram Navami festivities, which triggered violent clashes between Hindus and Muslims, including stone pelting and arson. Muslim shops, mosques and other property were set on fire and there appeared to be a deliberate and conscious attempt to provoke Muslims. The VHP and the Bajrang Dal purportedly put out calls on their social media inviting Hindus to such processions – the posters containing such invites were reported to have stated “*Jai Hindurashtra*” (victory of Hindu Nation) and “*Aao mil kar kare Ram Rajya ka Nirmaan*” (come, let’s realize the goal of the Rule of Lord Rama).²⁴¹

In Khargone, Madhya Pradesh, a Ram Navami procession was carried out in the Muslim-dominated area of Talab Chowk. Communal violence broke out between the members of the procession and Muslim residents of the area.²⁴² The violence was characterized by stone pelting and arson, prompting the police to impose a curfew in the region.²⁴³ Similar incidents of violence, stone-pelting and arson were also reported during Ram Navami processions in Goa’s Vasco district²⁴⁴ and in Karnataka’s Kolar district.²⁴⁵

²⁴¹ Tarushi Aswani, “‘Organised Violence’: How Mosques, Dargahs, Muslim Houses Were Vandalised in Gujarat on Ram Navami”, *The Wire*, 12 April 2022.

²⁴² “Madhya Pradesh: Curfew in Khargone City after Stone-Pelting at Ram Navami Process Triggers Arson”, *The New Indian Express*, 11 April 2022.

²⁴³ The Print, “MP: Five Held for Killing Man During Communal Violence; Three Others Absconding”, 22 April 2022.

²⁴⁴ Herald Goa, “Tension Erupts in Baina as Groups Belonging to Two Communities Clash”, 11 April 2022.

²⁴⁵ “Violence in 7 States on Ram Navami: One Dead in Gujarat, One in Jharkhand”, *The Quint*, 11 April 2022.

On 10 April 2022, violence erupted on the JNU campus in Delhi, leaving several students injured, over an alleged disagreement over non-vegetarian food being served in the hostels. There are different versions as to what triggered the violence. While a section of students belonging to ABVP claim that some ‘leftists’ wanted to disrupt and prevent a Ram Navami ‘*havan*’ (a Hindu ritual in which offerings such as ghee and grains are burned on a special occasion) from taking place, another section of students claimed that ABVP students had objected to a vendor delivering chicken to be cooked in the hostel during the ABVP’s Ram Navami *havan*, which had triggered the clashes.²⁴⁶

4.12. Jahangirpuri Clashes and the Bulldozer Demolition Drive

Communal violence flared up in Delhi’s Jahangirpuri area, after hundreds of people, including several members of Hindu right-wing organizations took out a Shobha Yatra procession in celebration of Hanuman Jayanti (birth of Hindu god Hanuman) on 16 April 2022. The Jahangirpuri neighbourhood of Delhi predominantly consists of a Bengali-speaking Muslim population, and local BJP leaders alleged that a large proportion of them were illegal Bangladeshi immigrants.²⁴⁷ While Hindus and Muslims blame each other for the clashes, it is reported that during the Hanuman Jayanti procession in Jahangirpuri, Hindu men were seen wearing saffron clothing, brandishing swords and chanting slogans. It is alleged that members of the Hanuman Jayanti procession waved a saffron flag in front of a mosque in Jahangirpuri, which ignited violence.²⁴⁸

In the wake of the communal clashes, BJP leader Kapil Mishra claimed that Jahangirpuri was known to harbour “Bangladeshi infiltrators” and that people had been mobilized from the area during the Delhi riots in 2020. He reportedly suggested that the incident should be treated as a terror attack. He stated that:

²⁴⁶ “Violence in JNU After ABVP Allegedly Tried to Stop Non-Veg Being Cooked on Ram Navami”, *The Wire*, 11 April 2022.

²⁴⁷ “Jahangirpuri: Shock and Anger in Delhi After Religious Violence”, *BBC News*, 18 April 2022.

²⁴⁸ Arfa Khanum Sherwani, “Watch: How Communal Clashes Broke Out in Delhi’s Jahangirpuri”, *The Wire*, 21 April 2022.

They should be identified and their homes should be bulldozed.²⁴⁹

Following the communal tensions in the Jahangirpuri neighbourhood of Delhi, Delhi's local civic body, the Municipal Corporation of Delhi (run by the BJP government), carried out what it called a routine anti-encroachment drive in Jahangirpuri purportedly to clear all illegal constructions in the area.²⁵⁰ The North Delhi Municipal Corporation demolished several shops, houses, carts and even the outer gate of a mosque in the area, which had been at the centre of communal clashes in the neighbourhood the previous week. No warning or notice had been issued to the alleged encroachers prior to the demolition drive.²⁵¹ The demolitions are alleged to have been the consequence of a letter written by Delhi BJP Chief Adesh Gupta to the Mayor of Delhi, requesting him to identify illegal constructions by "rioters" and demolish them.²⁵² The demolition drive was carried out along with the deployment of heavy police and paramilitary forces, despite being termed a "routine exercise" by the Delhi Mayor. The Supreme Court agreed to hear a petition challenging the anti-encroachment drive and stayed the activities of the Delhi civic body.²⁵³

A demolition drive was also carried out by the BJP government in the state of Madhya Pradesh, including in Khargone, allegedly selectively targeting the homes and properties of those believed to be involved in the communal clashes on the occasion of Ram Navami celebrations in the area on 10 April 2022. Reportedly, areas where maximum rioting had taken place were identified and the district administration had sought to demolish "illegal structures" constructed on encroached government land in those areas to "send a message" to rioters. Although officials claimed that there is no correlation between the demolitions and the communal violence,²⁵⁴ bulldozers targeted and destroyed the homes of Muslims accused (but not convicted) of

²⁴⁹ "Jahangirpuri Violence: Arvind Kejriwal Appeals for Calm, Kapil Mishra Calls it Terror Attack", *The Indian Express*, 17 April 2022.

²⁵⁰ Nitin Srivastava, "Jahangirpuri: How Religious Violence Razed Homes and Dreams", *BBC News*, 21 April 2022.

²⁵¹ Akhil Kumar, "14 Teams, 9 Bulldozers, 1500 Cops: How Delhi Demolition Was Carried Out", *NDTV*, 20 April 2022.

²⁵² *Ibid.*

²⁵³ "Jahangirpuri Eviction Drive Updates: Demolition Drive Stopped After Supreme Court's 'Status Quo' Order", *The Hindu*, 20 April 2022.

²⁵⁴ Neelam Pandey, "'Stone Pelters will be Greeted with Bulldozer': BJP Defends MP Govt Action on Khargone Riot", *The Print*, 14 April 2022.

throwing stones at Hindus during the incident in Khargone.²⁵⁵ Soon after the communal violence broke out, the State Home Minister for Madhya Pradesh, Narottam Mishra, stated that “*Jis ghar se patthar aaye hai, us ghar ko hi pattharon ka dher banayenge*” (the houses from which stones were pelted will be turned into rubble).²⁵⁶ Mishra further directly blamed Muslims for the communal violence during Ram Navami celebrations, stating that “If Muslims carry out such attacks then they should not expect justice”.²⁵⁷

The anti-encroachment drive in Delhi soon spread to other neighbourhoods.²⁵⁸ A demolition drive was set to take place in the Shaheen Bagh neighbourhood; however, it was halted due to resistance and protests by residents, activists and media personnel.²⁵⁹ Two weeks after the demolition drive in Jangirpuri, the BJP-ruled South Delhi Municipal Corporation carried out similar demolitions in Delhi’s Tughlakabad area.²⁶⁰

The bulldozer has thus become a symbol of the brute force of the Indian state, its complicity in targeting minorities, especially Muslims (since the demolition drives primarily targeted Muslim-dominated neighbourhoods) and apathy towards growing instances of communal violence in the country. News reports were flooded with images of bulldozers razing shops and houses to the ground, as locals looked on, too stunned and helpless to react.²⁶¹

²⁵⁵ Gerry Shih and Anant Gupta, “How Bulldozers in India Became a Symbol of Hindu Nationalism”, *The Washington Post*, 27 April 2022.

²⁵⁶ Bismee Taskin, “‘Message to Rioters’ or ‘Anti-Encroachment Drive’ – What Exactly Happened in Khargone After Riot”, *The Print*, 16 April 2022.

²⁵⁷ Anurag Dwary, “Madhya Pradesh Home Minister Blames Muslims for Ram Navami Clashes”, *NDTV*, 12 April 2022.

²⁵⁸ “Anti-encroachment Demolition Drive Underway in Several Parts of Delhi Today”, *Livemint*, 20 May 2022.

²⁵⁹ Shreya Basak, “The Demolition Drive at Shaheen Bagh that Never Happened, but Did It Give a Message?”, *Outlook*, 10 May 2022.

²⁶⁰ “Demolition Drive Underway in Delhi’s Tughlakabad Area”, *Scroll*, 4 May 2022.

²⁶¹ Zoya Mateen, “Madhya Pradesh: Why an Indian State is Demolishing Muslim Homes”, *BBC News*, 15 April 2022.

The Statutory Framework in India

Having highlighted the incidents of communal violence and hateful expression against Muslims in the name of Hinduism, it is important to draw attention to the legal framework on hate speech in India. Hate speech does not contain a legal definition in India. Neither is there a universally accepted definition of hate speech within the international legal framework. Article 19(1) of the Constitution of India gives all citizens in India the right to freedom of speech and expression. However, this right is subject to reasonable restrictions “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”.²⁶²

5.1. The Indian Penal Code of 1860

The IPC contains several sections that deal with hate speech. Section 153A of the IPC penalizes “promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to the maintenance of harmony”. The means of promoting or attempting to promote such enmity includes a broad range of activities, such as “by words, either spoken or written, or by signs or by visible representations or otherwise”, or by the commission of acts which are “prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity” and the effect of such acts should be to promote “disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities”.²⁶³ Punishment for the commission of the above-mentioned offence shall be imprisonment which may extend to three years, a fine, or both. If such an offence is committed in a place of worship, he or she shall be punished with imprisonment which may extend to five years and shall also be liable to a fine.

²⁶² Constitution of India, Article 19(2), see above note 94.

²⁶³ India, Penal Code, 6 October 1860, Section 153A (<https://www.legal-tools.org/doc/6a8f6b/>).

Section 153B of the IPC prohibits imputations and assertions against members of any religious, racial, regional or linguistic group which are prejudicial to national integration.²⁶⁴ The punishment for an offence under this section is the same as for the commission of an offence under Section 153A.

Section 295A of the IPC penalizes deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.²⁶⁵ Punishment for this offence is imprisonment for a term which may extend up to four years, or with fine, or both.

Section 298 of the IPC penalizes the deliberate wounding of religious feelings of any person, by the utterance of any word, or by making any sound in the hearing of that person or by making any gestures in the sight of that person, or by placing any object in the sight of that person.²⁶⁶ Punishment for the commission of an offence under Section 298 is imprisonment up to a term of one year, or with fine, or both.

Section 124A of the IPC deals with the offence of sedition (hatred, contempt, disaffection towards the Government of India),²⁶⁷ while Section 505(2) penalizes the offence of public mischief: whoever makes, circulates or publishes any statement or report containing any rumour or alarming news with the “intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities” is liable to be punished with imprisonment up to three years, or with fine, or with both.²⁶⁸

Sections 8, 123(3A) and 125 of The Representation of the People Act, 1951 (‘RPA’) deal with electoral malpractice.²⁶⁹ Section 8 of the RPA provides for disqualification of persons convicted of offences under, *inter alia*, Section 153A of the IPC or sub-sections (2) and (3) of Section 505 of the IPC. Section 123 of the RPA defines what constitute ‘corrupt practices’ within the context of elections in India. Section 123(3A) defines as a corrupt

²⁶⁴ *Ibid.*, Section 153B.

²⁶⁵ *Ibid.*, Section 295A.

²⁶⁶ *Ibid.*, Section 298.

²⁶⁷ *Ibid.*, Section 124A.

²⁶⁸ *Ibid.*, Section 505.

²⁶⁹ India, The Representation of the People Act, Sections 8, 123(3A), and 125, 17 July 1951 (<https://www.legal-tools.org/doc/f9v9qf/>).

practice “the promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate”. Section 125 of the RPA provides that an offence committed under Section 123(3A) of the RPA shall be punished with up to three years of imprisonment, or with fine, or both.

Section 95 of the Indian Code of Criminal Procedure, 1973 (‘CrPC’) empowers the State Government to declare forfeited any newspaper, book or document, which contains matter the publication of which is punishable, *inter alia*, under Sections 124-A, 153-A or 153-B of the IPC.²⁷⁰ Section 107 of the CrPC serves as a measure of preventive justice and empowers an Executive Magistrate to prevent a breach of peace or disturbance of public order that may occur within his local jurisdiction (including as a consequence of hate speech).²⁷¹ Similarly, Section 144 of the CrPC authorizes a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, to pass orders in urgent cases of nuisance or apprehended danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.²⁷² As can be seen from these provisions of the CrPC, Indian State Governments enjoy wide discretion in determining what publications contain material the content of which is punishable under the hate speech provisions of the IPC as well as what situations warrant danger to public order and human life.

5.2. The Supreme Court’s Jurisprudence on the Meaning of Hate Speech

In the Supreme Court case *Ramji Lal Modi v. State of Uttar Pradesh*,²⁷³ the petitioner argued that Article 19(2) of the Constitution of India only allowed for restrictions on the freedom of speech in the interests of public order, however, the ambit of Section 295A was much wider, since it criminalized all speech that was intended to outrage religious feelings. The Supreme Court

²⁷⁰ India, Code of Criminal Procedure, 25 January 1974, Section 95 (<https://www.legal-tools.org/doc/29b68e/>).

²⁷¹ *Ibid.*, Section 107.

²⁷² *Ibid.*, Section 144.

²⁷³ Supreme Court of India, *Ramji Lal Modi v. State of Uttar Pradesh*, Judgement, 5 April 1957, AIR 1957 SC 620 (<https://www.legal-tools.org/doc/bi400l/>).

clarified the rationale behind the restriction of speech under Section 295A of the IPC as follows:

In the first place clause (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression “in the interests of” public order, which is much wider than “for maintenance of” public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction “in the interests of public order” although in some cases those activities may not actually lead to a breach of public order. In the next place Section 295-A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a) and consequently, the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case. For the reasons stated above, the impugned section falls

well within the protection of cl. (2) of Art. 19 and this application must, therefore, be dismissed.²⁷⁴

Therefore, any speech that has a tendency to create public disorder could be penalized. Through the above interpretation, it is seen that the Supreme Court created a “legal fiction”.²⁷⁵ The Court assumed that insults to a religion uttered with the deliberate and malicious intention of outraging the religious feelings of a class would necessarily tend to cause public disorder and hence, ought to be penalized.

In *Bilal Ahmed Kaloo v. State of Andhra Pradesh*,²⁷⁶ the Supreme Court distinguished between the provisions of Sections 153A and 505(2) of the IPC. The Supreme Court held that the common ingredient between both Sections is the promotion of feelings of enmity, hatred or ill-will between different religious or regional groups or castes or communities. While under Section 153A, promotion of such feelings is done by a person through “words, either spoken or written, or by signs or by visible representations”, under Section 505(2), such feelings are promoted by making and publishing or circulating any statement or report containing alarming news or rumours.²⁷⁷ *Mens rea* is a necessary ingredient of both offences.²⁷⁸ Further, both Sections refer to promotion of feelings of enmity, hatred and ill-will “between different” religious, racial, linguistic or regional groups and hence, the Court concluded that “it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections”.²⁷⁹ The Court explained the distinction between the two Sections in the following terms:

The main distinction between the two offences is that while publication of the words or representation is not necessary under the former, such publication is sine qua non under Section 505. The words “whoever makes, publishes or circulates” used in the setting of Section 505(2) cannot be interpreted

²⁷⁴ *Ibid.*, para. 9.

²⁷⁵ Gautam Bhatia, “‘Blasphemy law’ and the Constitution”, *Mint*, 19 March 2016 (available on Mint’s web site).

²⁷⁶ Supreme Court of India, *Bilal Ahmed Kaloo v. State of Andhra Pradesh*, Judgement, 6 August 1997, (1997) 7 SCC 431 (<https://www.legal-tools.org/doc/n4aknu/>).

²⁷⁷ *Ibid.*, para. 10.

²⁷⁸ *Ibid.*, para. 11.

²⁷⁹ *Ibid.*, para. 15.

disjunctively but only as supplementary to each other. If it is construed disjunctively, anyone who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153-A also and then that section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.²⁸⁰

The definition of hate speech remains elusive and unsettled both within the Indian statutory framework as well as in the international legal framework. In *Pravasi Bhalai Sangathan v. Union of India* ('*Pravasi Bhalai*'),²⁸¹ the Supreme Court of India drew on the understanding of hate speech espoused by the Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott*, which explained the meaning of hate speech as follows:

Hate speech is an attempt to marginalize individuals on the basis of their membership of a particular group. Using expression that exposes the group to hatred, hate speech seeks to delegitimize group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech therefore rises beyond causing distress to individual group members. It can have societal impact. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from discrimination to ostracism, segregation, deportation, violence, and, in the most extreme cases, genocide. Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate, thereby placing a serious barrier to their full participation in our democracy.²⁸²

This understanding of hate speech places emphasis on speech that can cause actual material harm through the social, economic and political marginalization of a community. It is something that feeds into a larger context of discrimination. The idea of discrimination lies at the heart of hate speech

²⁸⁰ *Ibid.*, para. 12.

²⁸¹ Supreme Court of India, *Pravasi Bhalai Sangathan v. Union of India*, Judgement, 12 March 2014, (2014) 11 SCC 477, para. 8 ('*Pravasi Bhalai Sangathan*') (<https://www.legal-tools.org/doc/6drbwq/>).

²⁸² Supreme Court of Canada, *Saskatchewan (Human Rights Commission) v. Whatcott*, Judgment, 27 February 2013, [2013] 1 S.C.R. (<https://www.legal-tools.org/doc/ojtnu8/>).

as explained above. This definition of hate speech is also important in that it focuses on speech that targets the social standing of a group and does not dwell on causing of distress to individuals.²⁸³

The Indian Supreme Court in *Pravasi Bhalai* also requested the Law Commission of India to consider, *inter alia*, a definition for hate speech.²⁸⁴ The Law Commission of India, in its Report on Hate Speech of 2017, explained the idea of hate speech as follows:

Hate speech generally is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like (sections 153A, 295A read with section 298 IPC). Thus, hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence.²⁸⁵

The Law Commission recommended the insertion of new provisions in the IPC to elaborately address the issue of hate speech. Accordingly, the Law Commission proposed a draft amendment bill, The Criminal Law (Amendment) Bill, 2017, which proposed the insertion of two new sections in the IPC: Section 153C (prohibiting incitement to hatred) and Section 505A (intentionally causing fear, alarm or provocation of violence in certain cases).²⁸⁶ In this sense, the Law Commission seems to have been aware of the dangers of hate speech in terms of its potential to incite violence. However, the recommendations of the Law Commission have not been accepted to date.

In a recent case, *Amish Devgan v. Union of India and Others* ('*Amish Devgan*'),²⁸⁷ the Indian Supreme Court analysed its jurisprudence on hate speech and once again underscored the importance of 'public order' as the rationale behind the curtailment of free speech. The Supreme Court also emphasized that one of the objectives behind criminalizing hate speech was 'dignity':

²⁸³ Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech under the Indian Constitution*, Oxford University Press, New Delhi, 2018, pp. 137-173.

²⁸⁴ *Pravasi Bhalai Sangathan*, para. 29, see above note 281.

²⁸⁵ Law Commission of India, 267th Report on Hate Speech in India, 23 March 2017, para. 6.31 (<https://www.legal-tools.org/doc/l6puhr/>).

²⁸⁶ *Ibid.*, para. 6.33.

²⁸⁷ Supreme Court of India, *Amish Devgan v. Union of India and Others*, Judgement, 7 December 2020, (2021) 3 SCC 306 (<https://www.legal-tools.org/doc/lrh6yj/>).

At this stage, it is necessary to clarify what is meant by the expression ‘dignity’ in the context of ‘hate speech’ – for an expansive meaning, if given, would repress and impede freedom to express views, opine and challenge beliefs, ideas and acts. Dignity, in the context of criminalisation of speech with which we are concerned, refers to a person’s basic entitlement as a member of a society in good standing, his status as a social equal and as bearer of human rights and constitutional entitlements. It gives assurance of participatory equality in inter-personal relationships between the citizens, and between the State and the citizens, and thereby fosters self-worth. Dignity in this sense does not refer to any particular level of honour or esteem as an individual, as in the case of defamation which is individualistic. The Supreme Court of the United States of America in *Beauharnais v. Illinois*, while upholding conviction for hate speech, had emphasised that such speech should amount to group defamation which though analogous to individual defamation has been traditionally excluded from free speech protection in America. Loss of dignity and self-worth of the targeted group members contributes to disharmony amongst groups, erodes tolerance and open-mindedness which are a must for multi-cultural society committed to the idea of equality. It affects an individual as a member of a group. It is however necessary that at least two groups or communities must be involved; merely referring to feelings of one community or group without any reference to any other community or group does not attract the ‘hate speech’ definition.²⁸⁸

Thus, in the Supreme Court’s understanding of the statutory provisions on hate speech in India, particularly Sections 153A and 505(2) of the IPC, in order for hateful utterances to constitute ‘hate speech’, it must refer to two distinct groups and attempt to create enmity between the two.

Further, in *Amish Devgan*, the Supreme Court has construed hate speech as speech that is in the nature of incitement to hatred or violence and that promotes or is likely to promote public disorder:

Therefore, anti-democratic speech in general and political extremist speech in particular, which has no useful purpose, if and only when in the nature of incitement to violence that ‘creates’,

²⁸⁸ *Ibid.*, para. 46.

or is 'likely to create' or 'promotes' or is 'likely to promote' public disorder, would not be protected.

55. Sometimes, difficulty may arise and the courts and authorities would have to exercise discernment and caution in deciding whether the 'content' is a political or policy comment, or creates or spreads hatred against the targeted group or community. This is of importance and significance as overlap is possible and principles have to be evolved to distinguish. We would refer to one example to illustrate the difference. Proponents of affirmative action and those opposing it, are perfectly and equally entitled to raise their concerns and even criticise the policies adopted even when sanctioned by a statute or meeting constitutional scrutiny, without any fear or concern that they would be prosecuted or penalised. However, penal action would be justified when the speech proceeds beyond and is of the nature which defames, stigmatises and insults the targeted group provoking violence or psychosocial hatred. The 'content' should reflect hate which tends to vilify, humiliate and incite hatred or violence against the target group based upon identity of the group beyond and besides the subject matter.²⁸⁹

Thus, it can be seen from the above analysis that the Supreme Court has on several occasions considered the exact import of statutory provisions on hate speech within the Indian context. The Supreme Court's analysis in both *Amish Devgan* and *Pravasi Bhalai* provide the basis to understand the need to maintain a balance between free speech guaranteed under the Constitution of India and the need to curtail hate speech within the Indian context, given the rising instances of Islamophobia, genocidal slogans against minorities and religious polarization. While the Court in *Amish Devgan* does not mention ostracization or discrimination as one of the consequences arising from hate speech, this is explicitly referred to in the definition favoured by the Court in *Pravasi Bhalai* and the definition adopted by the UN Strategy and Plan of Action on Hate Speech.²⁹⁰ Hate speech as a tool to discriminate, stigmatize and destabilize the Muslim community and incite violence against them is playing out in real time in India.

²⁸⁹ *Ibid.*, paras. 54-55.

²⁹⁰ UN Secretary-General, "United Nations Strategy and Plan of Action on Hate Speech", May 2019, p. 2 (<https://www.legal-tools.org/doc/5rrb5b/>).

Conclusions

Hate speech and violence can have serious consequences for the social fabric of a country, especially one as diverse and multicultural as India. The rise in hate speech and calls for violence and genocide by Hindus against Muslims has reached an alarming level in recent years. The simultaneous development of social media platforms, which are used as tools to spread hate rhetoric and discrimination against minority groups, has become a form of psychological warfare, which normalizes intolerance and acts as an omnipresent weapon against members of a group defined by religion, race, caste, or other markers. In January 2022, Dr. Gregory Stanton, Director of Genocide Watch, warned that India is exhibiting early warning signs of genocide and that several stages of genocide have been fulfilled in India.²⁹¹ The United States Holocaust Memorial Museum's Early Warning Project has ranked India second in its list of countries at risk for mass-killing in 2021-22.²⁹²

While the danger of hate speech and hateful expression are well acknowledged in so far as incitement to violence is concerned, less emphasis is placed on the intangible effects of hateful utterances – the effect on the psyche and morale of the targeted community and their social standing and perception within society. Social media is a powerful tool which ensures that hateful utterances continue to circulate long after they are uttered and have the potential to cause continuing harm. In this manner, hateful utterances can form an endless loop of stigmatization, ostracization and discrimination against the targeted communities and when allowed to continue unchecked, can reach unprecedented levels. It is important to accord importance to the devastating effects of verbal violence, not just as a precursor to physical violence but as a source of emotional and psychological distress for the targeted community and their ability to live a life with dignity.

The Hindu right-wing's efforts in 'othering' Muslims have resulted in the development of a false sense of victimhood among Hindus and triggered

²⁹¹ Karan Thapar, "Watch | 'US Congress Must Pass Resolution Warning India on Genocide': Gregory Stanton", *The Wire*, 19 January 2022.

²⁹² United States Holocaust Memorial Museum, Simon-Skjodt Center for the Prevention of Genocide: Early Warning Project, "Countries at Risk for Mass Killing 2021-22: Statistical Risk Assessment Results", November 2021.

feelings of alienation and anxiety among the Muslim community in India.²⁹³ Another regrettable consequence of hate rhetoric is the reduction of Hindus, Muslims and other minorities solely to their religious identities,²⁹⁴ thereby attempting to obliterate any sense of nationhood and belonging among the various religious groups in India. Further, there appears to be a dearth of national reconciliation mechanisms to address, among other things, inter-religious conflict and historical impunity and injustice.²⁹⁵

Given this background, it is of the utmost importance to understand the real threat posed by religion-based and -related hate speech and the factors that motivate it. This has been the endeavour of the present paper in the context of India, and indeed of the Centre for International Law Research and Policy ('CILRAP')'s project on 'Religion, Hateful Expression and Violence' as a whole in the global context. The present paper aims at providing a mapping of the language used and symbolic acts committed by religious actors (or in the name of their faiths) that amount to religion-based or -related hate speech or hateful expression. This paper also attempts to provide some reflections on the cultural and historical context of such hateful utterances or acts. Such utterances not only serve to intimidate, marginalize and discriminate against Muslims in India, but also result in real acts of violence against them. Understanding the root causes of hateful utterances and expressions against Muslims is an important step towards tackling the problem of hate speech, as is also reflected in one of the key commitments in the UN Strategy and Plan of Action on Hate Speech.

The ideology of Hindutva and its articulation have remained much the same since the early 1920's. In the words of Christophe Jaffrelot:

I do not think that Hindu nationalism has fundamentally changed over time, since its creation one hundred years ago. If you read Savarkar – and Golwalkar even more – you will find the same ideas as those which Hindutva leaders articulate today: the reading of history is the same, the enemies are the

²⁹³ Nissim Mannathukkaren, "The Slow Poison of Hate Speech Harms in Obvious and Insidious Ways", *The Wire*, 8 April 2022.

²⁹⁴ *Ibid.*

²⁹⁵ Global Action Against Mass Atrocity Crimes ('GAAMAC'), "Preventing Hate Speech, Incitement, and Discrimination: Lessons in Promoting Tolerance and Respect for Diversity in the Asia Pacific", 2021, pp. 160-195 (<https://www.legal-tools.org/doc/9ak28w/>).

same, the objective – a Hindu Rashtra where some Indians will be more equal than others – is the same.²⁹⁶

Given the close interlinking between Hindu nationalist groups and the ruling political party in India today, that is, the Sangh Parivar and the BJP respectively, it is often difficult to segregate political hate speech and religious hate speech. In fact, since religion in India forms the medium through which electoral votes are rallied, it is often religious leaders (who also hold key political positions within the ruling party, across state and national levels) who engage in hate rhetoric and calls for violence against members of minority religions, particularly Muslims.

Formal measures to combat hate speech through legislation and prosecution are indeed extremely important and relevant. Condemnation and criticism by the international community of a state's complicity in hateful utterances and violence against a minority religious group can also serve to bring about a positive effect in combating hate speech. This was evident in the international outrage over remarks made by BJP national spokeswoman Nupur Sharma and Delhi media operation head Naveen Kumar Jindal insulting the Prophet Muhammad in June 2022. Over fifteen nations, including several Arab States and Indonesia (which has the largest population of Muslims in the world), as well as the Organization of Islamic Cooperation strongly condemned the remarks made by the BJP members and called upon the Modi government to take strict action.²⁹⁷ Several states such as Qatar, Kuwait, Iran and Pakistan summoned Indian envoys and ambassadors stationed in their countries to express their displeasure at the BJP officials' statements.²⁹⁸ There were reports of a Kuwaiti supermarket pulling Indian products from its shelves in response to the derogatory remarks.²⁹⁹ Succumbing to the diplomatic backlash and the impending threat of an economic boycott, the BJP suspended Sharma and expelled Jindal from the party. The Indian Ambassador in Doha, Deepak Mittal, sought to distance the Modi government from the statements made by Sharma and Mittal, claiming that the

²⁹⁶ Ajoy Ashirwad Mahaprashasta, "'Not Hindu Nationalism but Society has Changed': Christophe Jaffrelot", *The Wire*, 25 January 2020.

²⁹⁷ "The Full List of 20 Countries and Bodies That Have Condemned the BJP Leaders' Remarks", *The Wire*, 7 June 2022.

²⁹⁸ "Condemnation, Summons for Indian Envoys in Gulf After BJP Leaders' Remarks on Prophet", *The Wire*, 6 June 2022.

²⁹⁹ "In Kuwait, Indian Products Pulled from Shelves Over Prophet Remarks", *NDTV*, 7 June 2022.

views expressed were those of “fringe elements”.³⁰⁰ Given that the actions taken by the Modi government were clearly in response to international pressure, it is safe to assume that in the absence of such pressure, government authorities may feel no obligation to intervene and contain a communally charged situation in India. In fact, Modi is infamous for his deafening silence in the face of mounting religious tensions and violence.³⁰¹

There is therefore a need to adopt a multi-pronged approach, and make use of measures internal to religious communities to prevent or reduce hateful expression in the name of religion. In the absence of a central authoritative religious figure for Hindus, measures can be taken to identify *de facto* religious leaders who have sufficient religious authority in local communities within cities, towns and villages, and impress upon them the need to impose informal sanctions against those members of the community who engage in hateful expression and violence in the name of religion.

Outreach programmes can also be conducted in local contexts to rationalize baseless hatred, hostility and stereotypes against Muslims. A recent study by the Pew Research Centre revealed that an overwhelming majority of Hindus in India still respect Islam as an Indian religion and believe that it is very important to respect all religions to be “truly Indian”, although they see little in common among all the religions in India and prefer to live separately.³⁰² This may be viewed as a positive sign that there is still hope to bring about peaceful coexistence of religious communities in India and that further harm may be prevented, or at the very least, minimized, by undertaking measures to curb hate speech and incitement to violence against minorities.

As Professor David J. Luban concluded in his presentation during CILRAP’s conference on ‘Religion, Hateful Expression and Violence’ held in Florence, Italy on 8-9 April 2022: “religious hate speech is most likely to motivate violence when the society is fracturing for other reasons”.³⁰³ The

³⁰⁰ Gerry Shih, “India Scrambles to Contain Fallout Over Insulting Comments About Islam”, *The Washington Post*, 7 June 2022.

³⁰¹ “Ex-Bureaucrats Urge Narendra Modi to End ‘Deafening’ Silence”, *The Telegraph*, 27 April 2022.

³⁰² Neha Sahgal, Jonathan Evans, Ariana Monique Salazar, Kelsey Jo Starr and Manolo Corichi, “Religion in India: Tolerance and Segregation”, *Pew Research Center*, 29 June 2021 (<https://www.legal-tools.org/doc/5e0dts/>).

³⁰³ David J. Luban, “Is There Anything Intrinsic to the World’s Religions that Makes Them Especially Prone to Hateful and Violence-Inspiring Speech?”, CILRAP Film, Florence, 8 April 2022 (<https://www.cilrap.org/cilrap-film/220408-luban/>).

task then is to recognize the fissures that belie Indian society and which provoke people to engage in hateful expressions and violence in the name of religion, and to work towards healing these fragments.

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Language and Connotation in Contemporary Hate Speech in India

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The recent spate of hateful rhetoric and violence against Muslims in the name of Hinduism in India has raised alarm bells in the international community. Hate speech and violence can have serious consequences for the social fabric of a country, especially one as diverse and multicultural as India. While Indian laws contain provisions criminalizing religious hate speech, the Indian government and law enforcement authorities have allowed such utterances and actions against Muslims to continue with impunity. Thus, formal measures fall short in effectively tackling this phenomenon.

It is the endeavour of the present paper in the Indian context, and indeed of the Centre for International Law Research and Policy's project on 'Religion, Hateful Expression and Violence' as a whole in the global context, to contribute to efforts to identify and devise supplementary measures to combat the rising tide of hate speech, incitement and violence in the name of religion around the world.

The present paper attempts to provide a factual basis to assess the real risk posed by religion-based and -related hate speech against Indian Muslims and the factors that motivate it. It does so by (i) tracing certain stages in India's history which marked the development of ideology that forms the basis of contemporary hate rhetoric against Muslims; (ii) outlining certain themes underlying contemporary hate speech; and (iii) reflecting on recent instances of hateful expression and violence against Muslims through which the influence of historical and cultural connotations is evident. It is hoped that the knowledge generated through the present paper will eventually inform attempts to find tools to encourage members of religious communities to refrain from engaging in the vocalization and transmission of hate speech in the name of their faiths.

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