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Protecting the Rights of Minorities under International Law and Implications of COVID-19: An Overview of the Indian Context

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Abstract: The concept of majority rule and respect for minority rights is demonstrated in several constitutions of the world. Oppression by the majority of the minority is barred by articles of these respective constitutions. Today, democracy is mostly a method of government of the people that is ruled by the people. The issue of minority rights is at the center of the concept of civic rights. Minority protection, thus, operates on the hypothesis that religious, cultural, and linguistic affiliations are essential features of the very notion of a civic, just society. This paper offers an alternative account of why minority rights have international significance and more information on the value of an international, socially just process for the allocation of resources by states. By this approach, international minority rights speak to the wrongs that international law itself produces by organizing international political reality into a legal order. This article focuses on the uncertain effect of religious autonomy in India and the outcome of democracy in the country. While the Indian constitution guarantees autonomy to its religious minorities and promises minorities their freedoms, Indian democracy, which was once considered remarkable in scale and duration, has been weakened by the rise of xenophobic nationalism and threats to religious minorities. Even the safety and religious freedom of minorities have been compromised during COVID-19. In the last few decades, these trends have been clear; however, they have dramatically increased in the last few years, and the administration has turned a blind eye.

Keywords: the rights of minorities; international legal framework; cultural rights; religious rights; constitutional law; democracy



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1. Introduction

In every genuine democracy today, majority rule is both endorsed and limited by the supreme law of the constitution, which protects the rights of individuals. The concept of majority rule and respect for minority rights is demonstrated in many Constitutions of the world for example, the American and Indian constitutions (Jefferson 2006). Oppression by the majority over the minority is barred by articles of the respective constitution. Today, democracy is generally a government of the people that is ruled by the people. Democracies understand the importance of protecting the rights, cultural identities, social practices, and religious practices of all individuals (UN Human Rights Committee 1994). In order for the people's will to govern, a system of majority rule with respect for minority rights has been put into place.

The concept of “minorityism” reflects a phenomenon of uncertainty and inferiority¹ that a particular section of society may face for a variety of reasons (Ibid). The distinctions among communities regarding “minority” and “majority” have existed throughout history. Some political systems do grant special community rights to their minorities, although this is not generally based on any recognition of minority “rights” per se (Jackson Preece 1998).

¹ Some scholars argue that, although the use of the term “inferior” is meant to indicate that a numerical minority position of the group is required, a neutral term with no undesirable connotations would be more suitable. See, generally (Henrard 2000, p. 33; Gilbert 1992).

The French and American revolutions in the late eighteenth century proclaimed the free exercise of religion as a fundamental right, although neither directly addressed the broader issue of minority protection.

In the United States, freedom of religion is a constitutionally protected right provided in the religion clauses of the First Amendment. Freedom of religion is also closely associated with the separation of church and state, a concept advocated by colonial founders, such as Dr. John Clarke, Roger Williams, William Penn, and later Founding Fathers, such as James Madison and Thomas Jefferson (Zimmerman 2010). The 1815 Congress of Vienna, which dismantled the Napoleonic Empire, recognized minority rights to some extent, as did the 1878 Treaty of Berlin, which recognized special rights for the religious community of Mount Athos (Benzo and Ferrari 2014).

India's old philosophy of multicultural and multireligious society has remained threatened by an increasingly exclusionary conception of national identity based on religion². During recent years, religious freedom conditions in India have experienced a drastic turn downward, with religious minorities under increasing assault, after the re-election of the present rightist government in May 2019. The national government used its strengthened parliamentary majority to institute national level policies violating religious freedom across India, especially for the Muslim minority community.

The national government allowed violence against minorities and allowed hate speech and incitement to violence.³ The Universal Periodic Review (UPR) attributes responsibility for anti-minority violence to the Indian Government, including the present governing political party. The rise of xenophobic discrimination and threats to religious freedom of minorities, was evident in the past also especially in targeting Muslims, Christians, and other minorities. Threats and hate speech against religious minorities have escalated drastically over the last few years. Killing or lynching in the name of "cow protection/vigilantism" is treated a heroic deed.

Following the outbreak of COVID-19, physical, verbal, and psychological warfare is being waged against these minorities, pushing their ostracization further in Indian society.⁴ It is regrettable that ideological hatred has been practiced in the garb of patriotism and nationalism. The Indian constitution guarantees autonomy to its religious minorities, and promises the freedom to manage their religious affairs independently⁵ Article 15, which encapsulates one of the fundamental rights of India's constitution, explicitly prohibits discrimination on grounds of religion, besides race, caste, sex, or place of birth.⁶

During the latest global pandemic, some governments have blamed minority faith groups for the outbreak of the coronavirus and used the crisis to justify further repression of religious communities that had already been suffering from severe marginalization. COVID-19 has added a new dimension to the hate speech and disinformation circulated by the national media against Indian minority communities (Regan et al. 2020). At the same time, political leadership was busy exacerbating the tensions between religious groups, and official actions were not aimed at fighting the virus but instead busy restricting their religious practices and legal rights.

The article provides a short overview of the targeted discrimination against minorities in India and apathy from the legal and political agencies to protect them. We suggest that neither of these two perspectives adequately captures the nature of the international legal order, which has a normative architecture unto its own.

² USCIRF | Annual Report 2018 available at https://www.uscifr.gov/sites/default/files/Tier2_INDIA.pdf, accessed on 16 June 2020.

³ USCIRF | Annual Report 2020, USCIRF–Recommended For Countries of Particular Concern (CPC) available at <https://www.uscifr.gov/sites/default/files/India.pdf>, accessed on 16 June 2020.

⁴ Rasheed Kidwai, Naghma Sahar (July 2020) Observer research foundation COVID-19 and Indian Muslims <https://www.orfonline.org/expert-speak/covid19-indian-muslims-69519/> (accessed on 23 December 2020).

⁵ (Indian Constitution, Article 30 see (Das Basu 2008)).

⁶ Ibid.

2. Protection of Minorities—Historical Development

The oldest roots of minority protection can be traced in the seventeenth century reforms that, explicitly, can be traced from the Westphalia treaty (1648).⁷ Even the treaty of Oliva in 1660 in favor of the Roman Catholics in Livonia, ceded by Sweden and Poland, also tried to protect minorities. The millet system⁸ of the Ottoman Empire, for example, allowed a degree of cultural and religious autonomy to non-Muslim religious communities, such as Orthodox Christians, Armenians, Jews, and others (Ghanea 2012). During the 19th century, as result of the Tanzimat reforms (1839–1876), the term was used for legally protected *ethno-linguistic* minority groups. The word *millet* comes from the Arabic word *millah* that literally means “nation” (Masters 2009).

The millet system has been called an example of pre-modern religious pluralism (Sachedina 2001). The millet system in the Muslim world provided the pre-modern paradigm of a religiously pluralistic society by granting each religious community an official status and a substantial measure of self-government.⁹ The Ottoman Empire followed the tradition of the millet system, beginning with Sultan Mehmet Fatih (Shaw 1977), and improved its institutional structure by explicitly stating that the rights of non-Muslim communities be addressed to them in the royal decrees. These decrees were called *Ahd-name*, and, because they were accompanied by the Sultan’s pledge, they had the force of an international contract (El Fadl 1994).

Greek Orthodox Christians were not established as the first millet after the conquest of Constantinople by Sultan Mehmet (1453), as is commonly assumed in the literature. Rather, they had the same communal rights all along under the Seljuqs and the Ottomans prior to the conquest of Constantinople in 1453 (Inalcik and Quataert 1997). The Orthodox patriarch had been granted the same rights as the leaders of other communities that had previously come under Islamic rule. The patriarch was allowed to apply Orthodox law in secular and religious matters (Senturk 2002). What Sultan Mehmet, who after the fall of Constantinople considered himself the Eastern Roman Emperor, did was to grant a charter to the patriarch of the Orthodox Church, Genady II.

As the policy of religious pluralism and multiculturalism was consolidated by the millet system, it allowed the Jews to form their own community and to establish independent religious, educational, and legal institutions in Istanbul (Shaw 1991). Historians commonly note that the freedom that was granted to the minorities within the Ottoman territories attracted large numbers of displaced Jewish communities that were among the victims of persecution in Spain, Poland, Austria, and Bohemia (Braude and Lewis 2013). While in Russia, Rumania, and most of the Balkan states, Jewish communities suffered from constant persecution (pogroms, anti-Jewish laws, and other vexations), Jews established on Turkish territory enjoyed an altogether remarkable atmosphere of tolerance and justice (Dumont 2013).

The French and American revolutions in the late eighteenth century proclaimed the free exercise of religion as a fundamental right, although neither directly addressed the broader issue of minority protection. On the contrary, “the contemporary minority issues with which we have familiarity are largely rooted in the nineteenth century” (Sigler 1983). The three great congresses of the nineteenth century, Vienna (1814–1815), Paris (1856), and Berlin (1878), included minority protection provisions in treaties establishing rights and security of populations that were to be transferred to foreign sovereignty (Thornberry 1991, p. 37). However, a more rational approach can be seen for the first time in the history of international law in the steps were taken for minority protection and their rights that were methodically defined in the Treaty of Versailles after World War I (Fink 1995).

⁷ Compare for example Treaty of Westphalia, which in 1648 granted religious right to the Protestant German population.

⁸ (Masters 2001) In the Ottoman Empire, a millet (Turkish: [millet]) was an independent court of law pertaining to “personal law” under which the Muslim community (a group abiding by the laws of Muslim Sharia), Christian Canon law, or Jewish Halakha were allowed to rule itself under its own laws.

⁹ Ibid.

The international protection of minorities originates from the Paris Peace Conference, which was held in 1919, giving the birth to the League of Nations (MacMillan 2003). Although the pact of the League of Nations contained no provisions regarding human rights, it incorporated two relating systems of mandates and of minorities (Buerghenthal 2009). The League's failure to establish an effective minorities system reflected the economic, social, and political problems of the inter-war period and contributed to the fall of Woodrow Wilson's vision 1919 (Knock 1995) of security system and disarmament, which resulted from the Second World War. The idea of human rights protection emerged stronger after the Second World War's disaster (Gibson 1996) regarding peoples that would be considered minorities from today's perspective (Henkin 1990).

Most international legal-political concerns during the nineteenth century, however, were directed toward justifying the unification of linguistic "nations" based on the principle of self-determination, rather than the protection of minority groups as such (Fisch 2015). As the lure of nationalism grew, people who did not share the ethnic, linguistic, or religious identity of the majority within their country were increasingly under threat (Baycroft 1998). By the time of the outbreak of the First World War in 1914, national or minority concerns were at the forefront of international politics, at least in Europe.¹⁰

Today "minorityism" is a global phenomenon, and, although its time significance and concomitant elements differ from country to country, the issue has been under the constant consideration of the United Nations. At the United Nations level the term "minority" was defined by Francesco Capotorti in 1977, as a "group numerically inferior to the rest of the population of the State, in a non-dominant position, whose members being nationals of the State possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."¹¹

Defining the Term "Minorities"

The concept of minorities has existed from long time, and, until the 1960s and 1970s, the term generally referred to national, ethnic or religious minorities in heterogeneous nation-states (Rawls 2003). In the 1960s and 1970s, the range of characteristics used to identify minority groups widened (e.g., gender, disability, and sexual orientation), and the practice of defining minority groups primarily on the basis of power and status disadvantages became common, as the world took the passage to Nationalism and state creation. Several definitions other than the one mentioned above for the term minority have also been shared over time.¹²

The United Nations Minorities Declaration in its Article 1¹³ and Article 2¹⁴ refers to minorities based on national or ethnic, cultural, religious, and linguistic identity, and provides that States should protect their existence, adopted by consensus in 1992.¹⁵ There is no internationally agreed definition of minorities. It is often stressed that the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language, or religion) and subjective factors (including that individuals must identify themselves as members of a minority).

Despite many references to "minorities" in international legal instruments, there is no universally agreed, legally binding definition of the term "minority." (Capotorti 1991). This is primarily because of a feeling that the concept of "minority" is inherently vague

¹⁰ Ibid.

¹¹ (Pentassuglia 2002). Also see /E/CN.4/Sub.2/384/Rev.1, para. 568, Minority Rights: International Standards and Guidance for Implementation (HR/PUB/10/3).

¹² Ibid.

¹³ Article 1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

¹⁴ Article 2, States shall adopt appropriate legislative and other measures to achieve those ends.

¹⁵ United Nations Human Rights, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx> (accessed on 12 February 2020).

and imprecise and that no proposed definition would ever be able to provide for the innumerable minority groups that could possibly exist (Rehman 2000). Consequently, international law has found it difficult to provide any firm guidelines in relation to defining the concept (Rehman 2000, p. 41).

The most widely acknowledged definition is the one formulated by Francesco Capotorti (Pejic 1997), a special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1977. For the purpose of his study on the rights of persons belonging to Ethnic, Religious and Linguistic Minorities, he defined, with the application of Article 27 of International Covenant on Civil and Political Rights (ICCPR) in mind, a minority group as a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members, being nationals of the state, possess ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, and maintain a sense of solidarity, directed toward preserving their culture, traditions, religion, or language.¹⁶

In 1985, the Sub-Commission submitted to the Commission on Human Rights a text on the definition of “minority” prepared by Jules Deschenes. The definition was, however, not accepted by the Commission. According to this definition, a minority is a group of citizens of a state, consisting of a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious, or linguistic characteristics that differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if not implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.¹⁷ Although there is some measure of agreement regarding the essential elements of the definitions proposed by Capotorti and Deschenes, scholars have criticized some of the elements for being vague, misleading, and inadequate for the diversified minority situations (Wheatley 2005).

A majority, on the other end of the spectrum, refers to the group that exercises political dominance in the state even if not in the numerical majority, while lobby actors are the internal and external pressures and factors that affect the state. Democracy is a method of government of the people that is ruled by the people. Democracies understand the importance of protecting the rights, cultural identities, social practices, and religious practices of all individuals. In order for the people’s will to govern, a system of majority rule with respect to minority rights has been put into constitution of various countries. Are those constitutional provisions always respected by the majority rulers? The answer is not necessarily affirmative (Thornberry 1991).

Thus, the question often arises as to whether, for example, persons with disabilities, persons belonging to certain political groups, or persons with a particular sexual orientation or identity (lesbian, gay, bisexual, transgender, or intersexual persons) constitute minorities. While the United Nations Minorities Declaration is devoted to national, ethnic, religious, and linguistic minorities, it is also important to combat multiple discrimination and to address situations where a person belonging to a national or ethnic, religious, and linguistic minority is also discriminated against on other grounds, such as gender, disability, or sexual orientation. Similarly, it is important to keep in mind that, in many countries, minorities are often found to be among the most marginalized groups in society and severely affected by, for example, pandemic diseases such as COVID-19 and HIV/AIDS, and in general have limited access to health services.¹⁸

3. Minorities Rights under International Law

The issues related to the rights of persons belonging to minorities may be found in nearly every human rights instrument. The United Nations recognizes that minority rights are essential to protect those who wish to preserve and to develop values and practices that

¹⁶ Supran 44 Francesco Capotorti, Study on the Rights of Persons.

¹⁷ Jules Deschenes, “Proposal concerning a definition of the term minority”, UN Doc. E/CN.4/Sub.2/1985/31/Corr.1 para.181 (1985).

¹⁸ Minority Rights: International Standards and Guidance for Implementation (HR/PUB/10/3).

they share with other members of their community and has been a champion for the cause of minorities rights since its inception in 1945. The United Nations provides protection of the rights of minorities under Article 27 of the International Covenant on Civil and Political Rights (ICCPR),¹⁹ and under Article 30 of the Convention of the Child.

In addition, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities is the document that sets the principal standards and provides guidance to countries to take legislative and other necessary measures to ensure the rights of persons belonging to minorities (Henrard 2000, p. 48). Instruments adopted by the Conference on Security and Co-operation in Europe and the Council of Europe, on the other hand, refer only to “national” minorities. The Minorities Declaration has the broadest scope, encompassing persons belonging to “national or ethnic, religious and linguistic minorities;” it also refers to the protection of “cultural” identity (Gellner 1983).

The UN Declaration on Minorities, as the first exclusively devoted to the subject, is perhaps the single most important UN instrument on minority rights; however, it is neither the beginning nor the end of UN efforts to promote and protect minority rights, for instance, the Convention against Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; United Nations Educational, Scientific and Cultural Organization’s (UNESCO’s) Convention Against Discrimination in Education; the UNESCO Declaration on Race and Racial Prejudice; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Belief; the Universal Declaration of Human Rights (Article 26); the International Convention on Economic, Social and Cultural Rights (Article 13); and the Declarations and Programmes of Action adopted in 1978 and 1983 by the two World Conferences to Combat Racism and Racial Discrimination (Fink 1995).

Article 13 the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the right of everyone to education, stating in some of its paragraphs that states should made possible for parents or legal guardians to choose schools for their children, other than those established by the public authorities, that conform to certain minimum educational standards. States are also expected to ensure the religious and moral education of their children in conformity with their own convictions. The Limburg principles on the implementation of ICESCR²⁰ endeavor to eliminate all kinds of discrimination and adopt special measures that allow disadvantaged groups access to the enjoyment of economic, social, and cultural rights (Eide et al. 1995).

The first Optional Protocol to the ICCPR²¹ allows individuals to submit complaints to the Human Rights Committee. The Human Rights Committee, an expert body, was established to monitor the implementation of the ICCPR and the Protocols to the Covenant in the territory of State parties. One part of its activities is the assessment of the reports,²² which the State parties must submit every five years on the legislative and implementation measures they have adopted regarding the rights recognized in the Covenant and on the progress made in the enjoyment of those rights.

The other scope of Human Rights Committee competences is individual procedure mechanisms, designed for individuals who claim that their rights and freedoms have been violated by a State who is party to the Optional protocol.²³ The International Convention on the Elimination of All Forms of Racial Discrimination has protective closes extending to

¹⁹ UN Human Rights Committee, General Comment No. 23: The Rights of Minorities (Art. 27), CCPR/C/21/Rev.1/Add.5, (1994).

²⁰ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, <http://shr.aaas.org/thesaurus/instrument.php?insid=94> (accessed on 12 February 2020).

²¹ Adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976. See the text at http://193.194.138.190/html/menu3/b/a_opt.htm (accessed on 21 January 2020).

²² Article 40 of the Covenant on Civil and Political Rights.

²³ A great part of the minority rights related cases decided by the Human Rights Committee are related to rights of indigenous peoples. See *Lubicon Lake Band (Bernard Ominayak) v Canada* (No 167/1984) (CCPR/C/38/D/167/1984), *Lovelace v Canada* (No.24/1977), *Mikmaq v Canada* (No.78/1980), 2 Selected Decisions 23, *Kitok v Sweden* (No. 197/1985), 1988 Report of the Human Rights Committee, GAOR 43rd Session, *Cadoret v France* (Nos 221/1987 and 323/1988 *ibid* at 219).

minorities.²⁴ Under the scope of the Article 14 the Committee on the Elimination of Racial Discrimination (CERD),²⁵ which is the first body by the United Nations created to monitor and review States' actions taken in fulfillment of their obligations under a specific human rights agreement.²⁶

The Convention established three procedures to make it possible for CERD to review the legal, judicial, administrative, and other steps taken by individual States to fulfill their obligations to combat racial discrimination. First, all States that ratify or accede to the Convention must submit periodic reports to CERD. Secondly, the Convention provides for State-to-State complaints. Last but not least, the Convention makes it possible for an individual or a group of persons who claim to be victims of racial discrimination to lodge a complaint with CERD against their State.

The Convention on the Prevention and Punishment of the Crime of Genocide²⁷ also extends its protection to minority groups, defining genocide in Article 2 as an act committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, such as, killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and/or forcibly transferring children of the group to another group.

The 1992 United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious, and Linguistic Minorities is generally seen as the consequence of the events that occurred after the fall of communism. It is the fundamental instrument that guides the activities of the United Nations in this field today. The Declaration contains a list of rights in favor of persons belonging to ethnic, national, religious, or linguistic minorities, and obliges State parties "to protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity."²⁸ The weak point of the Declaration is the lack of precise state obligations. However, as it is not a legally binding document, but simply a political declaration, it represents one of the first international documents that attempts to promote the protection of minority rights (Benoit-Rohmer 1996).

Some Observations of the Universal Periodic Review (UPR), United Nations, Human Rights Council Regarding the Indian Situation

The Universal Periodic Review (UPR) is a unique process that involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council, which is based on equal treatment for all countries. The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251.²⁹

As observed, a number of reoccurring communal incidents were associated with the attack on religious minorities in India. These give power and immediacy to the civil society accounts and underline the troubling nature of contemporary religious intolerance:

- *Terror* (e.g., "in Tamil Nadu one writer was terrorized to withdraw his [religious] books. Often they (writers and artists) are not provided with adequate security and protection and on the other hand, their abusers are not restricted. Mostly such abusers

²⁴ Ibid at 219.

²⁵ Adopted and opened for signature and ratification on 21 December 1965, entry into force 4 January 1969, http://193.194.138.190/html/menu3/b/d_icerd.htm (accessed on 21 February 2020).

²⁶ Human Rights Committee (which has responsibilities under the International Covenant on Civil and Political Rights), the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child.

²⁷ Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, entered into force on 12 January 1951. <http://www1.umn.edu/humanrts/instree/x1cppcg.htm> (accessed on 21 February 2020).

²⁸ Article 1 of the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

²⁹ Basic Fact about UPR www.ohchr.org/en/hrbodies/upr/pages/basicfacts.aspx (accessed on 24 May 2020).

get backing, encouragement, even felicitation by the *Hindutva* organizations and ruling elites").³⁰;

- *Harassment*—(e.g., “Christians have suffered harassment from both the government and civil society. Their requests for help and protection have also frequently been ignored by authorities”).³¹;
- *Victimization* (e.g., “the authorities have failed to prevent religious violence across the country. Draft legislation aimed at preventing and punishing communal and targeted violence, and ensuring access to justice and reparations for victims, has yet to be passed”).³²;
- *Threats* (e.g., “religious minorities, especially Muslims and Christians, are feeling increasingly at risk. Some ruling party leaders have made inflammatory remarks against minorities while militant Hindu groups, threatened and harassed Muslims and Christians, in some cases physically attacking them”).³³;
- *Torture* (e.g., “Police use of torture on individuals accused under Maharashtra Control of Organized Crime Act, 1999 (MCOCA)³⁴ in Maharashtra has been widespread . . . [there are many accounts] detailing the torture to which they had been subjected to extract the confessions”).³⁵
- *Killing* (e.g., “in March 2015, a trial court in Delhi acquitted 16 policemen accused of killing 42 Muslim men 28 years in the past³⁶, arbitrarily picked up from Meerut city of Uttar Pradesh. The Hashimpura massacre is an incident of mass murder, which took place on or around 22 May 1987 near Meerut in Uttar Pradesh state, India, during the 1987 Meerut communal riots during March to June 1987 with a death toll of 350. It is alleged that 19 personnel of the Provincial Armed Constabulary³⁷ rounded up 42 Muslim youths from the Hashimpura (locality) of the city, took them to the outskirts of the city, shot them in cold blood and dumped their bodies in a nearby irrigation canal . . . charges were dismissed due to a ‘scanty, unreliable and faulty investigation’”).³⁸;
- *Force* (e.g., “now again, just before the 2015 Panchayat elections, a Hindu attacked the Muslims,³⁹ torched their homes and forced them to seek refuge at the Ballabgarh police station”).⁴⁰;
- *Intimidation* (e.g., “Converts are often subjected to violence and intimidation, especially those who leave the Hindu faith for Islam, Buddhism or Christianity”) ⁴¹

³⁰ National Solidarity Forum, Submission to the Third Cycle UPR (NY: UN, 2016), p. 10. About The Universal Periodic Review (UPR) is a unique process that involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council that is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

³¹ Civil Society Coalition for Freedom of Religion and Strengthening Pluralism in India, *Submission to the Third Cycle UPR* (NY: UN, 2016), p. 10; *Cycle UPR* (NY: UN, 2016), p. 10; *Submission to the Third Cycle Universal Periodic Review (UPR)* (NY: UN, 2016), p. 8.

³² Amnesty International India, *Submission to the Third Cycle Universal Periodic Review (UPR)* (NY: UN, 2016), p. 8.

³³ Human Rights Watch, *Submission to the Third Cycle UPR* (NY: UN, 2016), p. 4.

³⁴ Maharashtra Control of Organised Crime Act, 1999 <http://www.lawzonline.com/bareacts/maharashtra-control-of-organised-crime-act/maharashtra-control-of-organised-crime-act.html> (accessed on 24 May 2020).

³⁵ Advocates for Human Rights et al, *ibid*, 2016, p. 5. Also Paul Chaney (2019): India at the crossroads? Civil society, human rights and religious freedom: critical analysis of CSOs’ third cycle Universal Periodic Review discourse 2012–2017, *The International Journal of Human Rights*, doi:10.1080/13642987.2019.1656610.

³⁶ (Amnesty International 2016).

³⁷ Hashimpura survivors file 615 RTI applications in 20 years long pursuit of justice. Asian Tribune. 25 May 2007.

³⁸ Advocates for Human Rights et al., *ibid*, 2016, p. 3. And Commonwealth Human Rights Initiative (2007). Feudal Forces: Democratic Nations–Police Accountability in Commonwealth South Asia. CHRI.

³⁹ Prabhu Razdan Hindustan Time, Ballabgarh: Muslim families seek refuge in police station, refuse to return home, 30 May 2015.

⁴⁰ National Council of Churches India, *Submission to the Third Cycle UPR* (NY: UN, 2016), p. 11.

⁴¹ Zo Indigenous Forum, *Submission to the Third Cycle UPR* (NY: UN, 2016), 15. See also Paul Chaney (2019): India at the crossroads? Civil society, human rights and religious freedom: critical analysis of CSOs’ third cycle Universal Periodic Review discourse 2012–2017, *The International Journal of Human Rights*, doi:10.1080/13642987.2019.1656610.

4. Minorities in India

Majority rule is a way of organizing a government where the citizens freely make political decisions through voting for representatives. The representatives with the most votes then represent the will of the people through majority rule. Minority rights are rights that are guaranteed to everyone, even if they are not a part of the majority (Charlton 2004). The constitution guarantee the minorities rights and assures the minority that they must trust that the majority will, and, in return the majority will take care of the wishes of the minority when making decisions that affect everyone.⁴² However, in practice, this system may be flawed as in the case of Indian democracy as well as in many other countries.

It is important to keep in mind that Indian minorities have not migrated to India from outside; rather, they have lived there from generation to generation. In India, minorities generally consist of Christians (2.5%), Sikhs (2%), Jains (1%)⁴³, and Muslims (14%). Indian Muslims are world's third largest population in the world. In India, the majority consist of Hindus, and their population includes 80% of India's population.⁴⁴ India is ostensibly a secular state; however, in a practical sense, in a country where more than 80% of population consists of one single religion, it is quite difficult to provide equal status to minority groups. Thus, in order to provide equal status to these minorities, special privileges are accorded to them in the Indian constitution. Taking an example, Muslims in India have a poverty rate of 43%, whereas the national average is 39% (National Sample Survey Organisation, 1999–2000). In rural areas, Muslim landlessness is 51% as compared to 40% for Hindus (Majumdar 2018).

Literacy rates are substantially lower among Muslims, leading to the deprivation of jobs in higher positions in government offices and skilled professions in the service sector. In urban areas, 60% of the Muslims have never gone to school, against the national average of 20%. Only 5% of Muslim women have completed high school education, and the income of the average Muslim is 11% less than the national average. To this may be added the Kashmiri Muslim community, with its distinct political history and its guaranteed status of self-rule in past, which is a testimony to the betrayal of rights and the denial of justice to the Muslim population.⁴⁵ Therefore, there is still need for further implementations of new laws in order to meet the drowning standards.

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

On the education front, only about 3.6 per cent of Muslims above the age of twenty were college graduates according to the recent data collected in 2006 from the National Sample Survey Organisation (NSSO). Proportions of 54.6 per cent of Muslims in villages and 60 per cent in urban areas have never attended schools. There are 3.1 per cent of the Muslim community in urban areas who are graduates and 1.2 per cent who are post-graduates. Only 0.8 per cent of Muslims in rural areas are graduates. The Committee also found an inadequate number of government schools in the Muslim-dominated areas

⁴² Ibid.

⁴³ Jains become sixth minority community—Latest News & Updates at Daily News & Analysis. 21 January 2014.

⁴⁴ "India has 79.8% Hindus, 14.2% Muslims, says 2011 census data on religion". Firstpost. 26 August 2016 <https://www.firstpost.com/india/india-has-79-8-percent-hindus-14-2-percent-muslims-2011-census-data-on-religion-2407708.html>, accessed on 8 June 2020.

⁴⁵ Ibid.

contributing to the low number of Muslim boys and girls attending schools (Ibid; [Parvez and Hasan 2015](#)).

Brief Historical Background of Muslims as a Minority in India

Islam was first introduced in India through the Arab invasion of Sind in CE 712 and through subsequent invasions of the eleventh and twelfth centuries. The religion firmly established itself as a force through the Mughal empires in the sixteenth century. The Mughals generally refrained from forcible conversions to Islam, and the great Mughal Emperor Akbar granted a remarkable measure of tolerance and autonomy to non-Muslims. Although a considerable number of soldiers and officials came with the Mughals, the bulk of the Muslim population is descended from peoples of India, mainly from members of lower castes who converted to Islam as a means of escape from persecution and repression at the hands of the caste Hindus ([Chand 1972](#)).

While the concentration of Muslims was in the north-west of India (present-day Pakistan) and the east (present-day Bangladesh), there were also substantial numbers throughout the north and east. The decline of the Muslim domination of India and the ultimate dispossession of the Mughal empire had a number of consequences. While bitterly resenting the loss of the empire, Muslims had to bear the brunt of the retaliatory policies at the hands of the new colonial masters after the failed uprising of 1857.⁴⁶

The Muslim League came in time to represent the aspirations of the Muslim masses in India during 1906 ([Mujahid 2007](#)), and ultimately spearheaded the Pakistan movement in 1940, led by Mohammed Ali Jinnah and Liaquat Ali Khan. Conflict between the Muslim League and the Indian National Congress, at the helm of the movement for independence from Britain, eventually resulted in the decision to partition India and to create Pakistan, 14 August 1947.⁴⁷

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

As far as India's Muslims were concerned, the creation of Pakistan as a homeland for Muslims resulted in a new minority problem for the now independent state of India. Muslim-majority regions (with the exception of Kashmir) separated to form the state of Pakistan. Muslim inhabitants of India now felt more insecure ([Jalal 1994](#)). The numerical strength of Muslims in India also decreased, from over 26 per cent of the population during 1941 ([Jalal 1994](#)) to about 14.4 per cent according to the 2011 census.

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

Constitutional Rights Accorded to Minorities and Their Protection

Right of a minority to establish educational institutions—(a) Article—30—Article—30(1) gives the linguistic or religious minorities the following two rights: (a) The right to establish; (b) The right to administer educational institutions of their choice. Article—30(2) mandates that, while granting aid to educational institutions, the state shall not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language ([Jain 2006](#)).

The minorities have been given protection under article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education

⁴⁶ Ibid.

⁴⁷ Ibid.

will develop the commonness of boys and girls of India. This is in the true spirit of liberty, equality, and fraternity through the medium of education.⁴⁸

The Supreme Court indicated in *Ahmedabad St. Xaviers College v. State of Gujarat* that the spirit behind article 30(1) is the conscience of the nation in that minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice, for the purpose of giving their children the best general education to make them complete men and women of the country.⁴⁹

In the Year Book on Human Rights U.N. Publication 1950 ed., minorities were described as non-dominant groups with different religious or linguistic traditions compared with the majority population. Article 30(1) of the Indian constitution uses the terms 'linguistic' and 'religious' minorities. The word 'or' means that a minority may either be linguistic or religious and that it does not have to be both a religious minority as well as a linguistic minority.

The Indian constitution uses the term 'minority' without defining it. In *Re: The Kerala Education Bill*⁵⁰, the Supreme Court opined that, while it is easy to say that a minority means a community that is numerically less than 50 per cent, the important question is, 50% of what? Should it be of the entire population of India, or of a state, or a part thereof? It is possible that a community may be a majority in a state but a minority in the whole of India. A community may be concentrated in a part of a state and may thus be in the majority there, though it may be in the minority in the state as a whole. If a part of a state is to be taken, then the question is where to draw the line and what is to be taken into consideration a district, town, a municipality, or its wards.⁵¹

The ruling in the *Kerala Education Bill* was reiterated by the Supreme Court in the *Guru Nanak University* case⁵². In that case, the Supreme Court rejected the contention of the state of Punjab that a religious or linguistic minority should be a minority in relation to the entire population of India. The Court has ruled that a minority has to be determined, in relation to the particular legislation that is sought to be impugned. If it is a state law, the minorities have to be determined in relation to the state population. The Hindus in Punjab constitute a religious minority. Therefore, Arya Samajists in Punjab also constitute a religious minority with their own distinct language and script⁵³.

It is within the realm of possibility that the population of a state may be so fragmented that no linguistic or religious group may by itself constitute 50 percent of the total state population. In such a situation, every group will fall within the umbrella of Article. 30(1) without there being a majority group in the state against which minorities need to claim protection.⁵⁴ While upholding these rights, the Supreme Court of India has, in the *T.M.A. PAI* case⁵⁵, also endorsed the concept that there should be no reverse discrimination and opines that the essence of Article 30(1) of Indian Constitution, is to ensure equal treatment between the majority and the minority institutions.

The Court has pointed out that if various sections and classes of the Hindus were to be regarded as 'minorities' under art. 30(1), then the Hindus would be divided into numerous sections and classes and cease to be a majority any longer. The sections of one religion cannot constitute religious minorities. The term 'minority based on religion' should be restricted only to those religious minorities, e.g., Muslims, Christians, Jains, Buddhists, Sikhs, etc., that have kept their identity separate from the majority, namely, the Hindus.⁵⁶

⁴⁸ Ibid.

⁴⁹ *Ahmedabad St. Xavier's College v. State of Gujarat*, AIR 1974 SC 1389.

⁵⁰ *In Re the Kerala Education Bill*, AIR 1958 SC 956.

⁵¹ (Bakshi 1996).

⁵² *D.A.V. College, Jullundur v. State of Punjab*, AIR 1971 SC 1737.

⁵³ Ibid. *D.A.V. College* also see *T.M.A. Pai Foundation & others v. State of Karnataka*, (1995) 5 SCC 220.

⁵⁴ ILL, *Educational Planning* (1967).

⁵⁵ *T.M.A PAI Foundation v. State of Karnataka*, AIR 1994 SC 13.

⁵⁶ *A.S.E Trust v. Director, Education, Delhi Adm.*, AIR 1976 Del 207.

In a vast country, such as India, in order to provide equality and unity among its citizens, as there is a wide difference between the minority and the majority, special rights should be endowed to minorities so that they can develop their personality. In accordance with this view, various articles in our constitutions and acts are enshrined so that these minorities can compete with the majority.

Among these articles, article 30(1) and the National Commission for Minority Educational Institutions Act, 2004, provides minorities the right to establish, administer educational institutes and affiliate themselves to central universities. The case before the Indian Supreme court involved the validity of the National Council for Minority Educational Institution's (NCMEI) decision to accord minority status to a college⁵⁷. The High Court had invalidated the NCMEI's grant of minority status to the college, and this decision was appealed in the Supreme Court of India. The Indian Supreme court's judgment was historic, as it reiterated that no fundamental right—including the rights of minorities—can be waived.

However, various lacunas have been observed since the birth of these rights and acts. These articles and acts raise several questions: (1) Is there any right to create educational institutes for minorities, and if so, under which provision? (2) In order to determine the existence of a religious or linguistic minority in relation to article 30 of the Indian Constitution, what is to be the unit, the State or the country as a whole? (3) To what extent can the rights of aided private minority institutions to administer be regulated? Answers to these questions are illusionary and ambiguous in nature.

5. Discriminatory Laws and Violence against Muslim Minorities

New, designed, more multifarious targeted forms of violence have started against minorities in India. A few such laws and incidents of violence against Muslim Minorities are discussed here.

5.1. National Register of Citizens: Discrimination and Denial of Nationality

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

The complete draft National Register of Citizens (NRC) in Assam was published on 30th July 2018, raising fears that, contrary to international law, it risked arbitrarily depriving the nationality of over 4 million persons and rendering them stateless. The populations at risk are overwhelmingly from minority ethnic, religious, and linguistic groups consisting of Muslims and Hindus of Bengali descent and Nepali-speaking populations with high percentages of women, children, and daily wage workers, all among the most marginalized and excluded communities.⁵⁸

Three days of violence erupted in Delhi with mobs attacking Muslim neighborhoods during February 2020, in the aftermath of the NRC agitation,⁵⁹ after Lok Sabha (one of the houses of Parliament) cleared the Citizenship Amendment Bill December 2019.⁶⁰ There were reports of Delhi police, operating under the Home Ministry's authority, failing to halt attacks and even directly participating in the violence. At least 50 people were killed.⁶¹

⁵⁷ CWP No.4211 of 2018, The Director School Education Vs National Commission for Minority decision on 20 March 2020.

⁵⁸ Alison Saldanha and Karthik Madhavapeddi, 'Our New Hate-Crime Database: 76% of Victims Over 10 Years Minorities; 90% Attacks Reported Since 2014' (*Fact Checker*, 30 October 2018). <https://archive.factchecker.in/our-new-hate-crime-database-76-of-victims-over-10-years-minorities-90-attacks-reported-since-2014/> (accessed on 17 July 2020).

⁵⁹ The Citizenship (Amendment) Act, No. 47 of 2019. <http://egazette.nic.in/WriteReadData/2019/214646.pdf> (accessed on 14 January 2020).

⁶⁰ Deeptiman Tiwary and Avishek G Dastidar, "Lok Sabha clears Citizenship Amendment Bill: Amit Shah invokes 'Partition on basis of religion' to defend Bill," *Indian Express*, 10 December 2019, <https://indianexpress.com/article/india/lok-sabha-clears-citizenship-amendment-bill-amit-shah-invokes-partition-on-basis-of-religion-to-defend-bill6158951/> (accessed on 14 January 2020).

⁶¹ Jaffery Gentleman, The New York Times How Delhi's Police Turned Against Muslims 12 March 2020 from USCIRF | ANNUAL REPORT 2020.

5.1.1. Hate Speech and Incitement (Art 20 of CCPR)

The laws to deal with hate speech and the prohibition of incitement to hatred, is generally contained in sections 153, 153a, 295a, and 505 of the Indian Penal Code. There is also section 123 (3A) of the Representation of People Act, 1951, which is applicable to political candidates during elections.

These laws are weak, and the State's record of enforcement of the laws is poorer still. According to an New Delhi Television Ltd. (NDTV) report of 2018, the use of hateful and divisive language by high-ranking politicians increased almost 500% in the previous 4 years. Of the 45 leaders responsible for hate speech since April 2014, only in six cases was there evidence of the accused being reprimanded or cautioned, or issuing a public apology. At least 21 political leaders (or 48%) had recorded more than one instance of hate speech.⁶²

5.1.2. Extrajudicial Killings (Called 'Encounter Killings' or 'Fake Encounters' in India)

State (province) police have also targeted Muslim youth, with Muslims killed disproportionately in extrajudicial killings, in what are called 'fake encounter killings' in India, in Uttar Pradesh and Haryana.⁶³ The Northern Uttar Pradesh state, in particular, has seen a spate of encounter killings by the local police since March 2017.⁶⁴

According to the state government of Uttar Pradesh (UP), there were 3026 'encounters' in UP from March 2017 to July 2018. In these encounters, 78 criminals were killed, 7182 were arrested, and 838 sustained injuries. In the six months between January 2018 and July 2018, 61 criminals were killed in the encounters with an average of more than eight persons per month.⁶⁵ Fact finding reports by civil society and media reports have stated that several victim families are being continuously harassed, threatened, and arrested in fabricated cases. The five UN human rights experts expressed alarm about allegations of at least 59 extrajudicial killings by the police in UP since March 2017 and the pattern of events in the cases of individuals allegedly being abducted or arrested before their killing as well as their bodies bearing injuries indicative of torture.⁶⁶

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

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

5.1.3. Anti-Cow Slaughter Laws

Mob lynching has become a way of life today in the northern part of India. In 22 June 2019, a viral video was shared on social media in India in which a young Muslim man tied up, bleeding profusely all over his body, hands folded, was being lynched by a mob that forced him to chant Glory to Lord.⁶⁸ The man, later identified as 24-year-old Tabrez Ansari,

⁶² Nimisha Jaiswal with Sreenivasan Jain NDTV 19 April 2018 <https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925> (accessed on 23 July 2020).

⁶³ (Citizens Against Hate 2018).

⁶⁴ India's compliance with ICCPR, May 2019 Citizens Against Hate, New Delhi & Quill Foundation, New Delhi.

⁶⁵ 4 May 2018. UP encounter death No 50: Same chase same story. <http://indianexpress.com/article/india/up-encounters-yogi-adityanath-up-police-same-chase-same-story-5162715/> (accessed on 21 June 2020).

⁶⁶ The Hindu, 31 March 2018. 'Uttar Pradesh's Encounters: 1000 and counting' www.thehindu.com/news/national/ups-encounters-1000-counting/article23404224.ece (accessed on 21 June 2020).

⁶⁷ (Viray 2016).

⁶⁸ (Ayub 2019).

was beaten for hours until he died at the hands of a mob in the eastern state of Jharkhand. This was a hate crime.⁶⁹ This phenomenon has continued, and a total of 30 Indians were killed in 63 incidents from 2014 to 2017⁷⁰, according to an India Spend content analysis of English media. In the wake of a number of well-publicized incidents of lynching and mob violence, most of them related to issues surrounding the cattle trade or beef consumption.⁷¹

In May 2018, a Muslim tailor, Siraj Khan, was beaten to death by a cow vigilante mob in Madhya Pradesh following accusations of slaughtering a bull.⁷² Anti-cow slaughter laws exist in 21 states in India, except Kerala, Goa, West Bengal, and states of Northeast states of India⁷³. Gujarat increased its punishment for cow slaughter to life imprisonment, becoming the country's most severe. Discriminatory impacts are felt directly by religious minority groups, particularly Muslims and Christians but also by lower-caste Hindus, including Dalits, many of whom consume beef. Nearly 30 Muslims have been lynched in India over suspicions of cow slaughter and the possession and consumption of beef since 2015.⁷⁴

The U.S. Commission on International Religious Freedom (USCIRF) chairman Mr. Tony Perkins called for the Indian government to take action to prevent further violence. "We condemn in the strongest terms this brutal murder, in which the perpetrators reportedly forced Tabrez Ansari to say Hindu chants as they beat him for hours."⁷⁵

In 2018, the Supreme Court urged⁷⁶ the National and state governments to combat lynchings with stricter laws. However, the National government and 10 states failed to take appropriate action by July 2020, and the Supreme Court again directed them to do so⁷⁷. Instead of complying, the Home Minister stated that the existing laws are sufficient and denied that lynchings had increased⁷⁸, while the Home Ministry instructed the National Crime Records Bureau to omit lynchings from the 2019 crime data report.⁷⁹

5.1.4. Anti-Conversion' Laws (Officially Called Freedom of Religion Act)

Anti-conversion laws are in force in six states (provinces), with recent efforts to introduce laws to additional states, and renewed calls for a national anti-conversion law. While these laws specifically prohibit conversions where fraud, force, or inducement are involved, in practice, the legislation has been used by right-wing extremists to discourage or prevent conversion from Hinduism to other religions, particularly Islam and Christianity—a situation that particularly disadvantages to lower castes (Dalits), for whom conversion can mean greater advantageous. Interfaith couples have faced harassment, with lynching carried out against so-called 'love Jihad'—a purported Muslim conspiracy to lure Hindu women into marriage.

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

The CAA drew international condemnation and prompted protests around the world. The Office of the UN High Commissioner for Human Rights called the law "fundamentally

⁶⁹ (Saberin 2018).

⁷⁰ (Abraham and Rao 2017).

⁷¹ Rupa Subramanya, Has India become "Lynchistan"? ORF, 1 July 2017. Available online: <https://www.orfonline.org/expert-speak/has-india-become-lynchistan/> (accessed on 15 June 2020).

⁷² (Ghatwai 2018).

⁷³ Lauren Frayer Spate of Lynchings Target Minorities, Especially Muslims, NPR Morning Edition In India 19 August 2019.

⁷⁴ (Giri 2018).

⁷⁵ (Ayub 2019).

⁷⁶ Annie Gowen, "India's Supreme Court warns of 'mobocracy,' urges government to pass anti-lynching law after deadly attacks" The Post's National desk, 17 July 2018. She was the India bureau chief, 2013–2018 in USCIRF | ANNUAL REPORT 2020.

⁷⁷ Staff reporter, The wire, Mob Lynchings: SC Issues Notice Over Implementation of Its Previous Directions 26/Jul/2019 in USCIRF | ANNUAL REPORT 2020 available at <https://www.uscifr.gov/sites/default/files/India.pdf> (accessed on 16 June 2020).

⁷⁸ News18.com, Amit Shah Says Lynchings Have Not Increased Under Modi Govt, No Special Law Needed to Tackle It 17 October 2019. <https://www.news18.com/news/politics/amit-shah-says-lynchings-have-not-increased-under-modi-govt-no-special-law-needed-to-tackle-it-2348987.html> (accessed on 16 June 2020).

⁷⁹ Vijaita Singh, 30% jump in 'crimes against state': National Crime Records Bureau (NCRB) The Hindu N.Delhi, 23 October 2019 in USCIRF | ANNUAL REPORT 2020.

discriminatory.”⁸⁰ In February 2020, the UN secretary-general said he was concerned over the future of religious minorities in India after the enactment of the CAA, saying “there is a risk of statelessness.”⁸¹ In January 2020, the United States Congress held a hearing on global religious persecution and raised concerns over the citizenship law and citizenship verification processes.⁸²

The same month, the European Parliament debated a joint motion on the law that described it as “discriminatory in nature and dangerously divisive.”⁸³ The US Commission on International Religious Freedom said the US government “should consider sanctions against the home minister and other principal leadership” and held a hearing in March during which one commissioner raised concerns that the law “in conjunction with a planned National Population Register and a potential nationwide National Register of Citizens, or NRC, could result in the widescale disenfranchisement of Indian Muslims.”⁸⁴

5.2. Sponsored Religious Discrimination: Rise with the COVID-19 Pandemic

At the height of the Black Death in the 14th century, rumors circulated throughout Europe that Jews were deliberately transmitting the plague by poisoning wells. Rather than quell these rumors, some governments effectively endorsed them and incorporated them into official policy. In 1349, the city fathers of Brandenburg passed a law that preemptively condemned the Jewish community for spreading the disease.⁸⁵

Similarly, in the recent pandemic, a barrage of disinformation blaming Muslims for deliberately spreading coronavirus flared up across the country, posing a further threat to India’s Muslim minority.⁸⁶ The health crisis has provided both motivation and cover for the increased persecution of minority faith groups.

Muslims in India are facing attacks and boycotts amid the coronavirus crisis. Muslims are being blamed for what some locals are calling “corona jihad.”⁸⁷ The Indian administration has also used the pandemic as an opportunity to crack down on political dissidents. Lockdown measures in the country have also led to the sudden displacement of migrant workers from large urban centers.⁸⁸

5.2.1. Smear Campaign against Muslims and Tablighi Jamat (An Islamic Reformist Movement)

Xenophobic tropes are evident from the manner in which the spread of COVID-19 in the country has been framed along religious lines. India’s 201 million Muslim citizens now

⁸⁰ “New citizenship law in India ‘fundamentally discriminatory’: UN human rights office.” *UN News*, December 13, 2019. <https://news.un.org/en/story/2019/12/1053511> (accessed on 25 June 2020).

⁸¹ “Citizenship Amendment Act may leave Muslims stateless, says U.N. Secretary-General António Guterres.” *The Hindu*, February 19, 2020. <https://www.thehindu.com/news/national/citizenship-amendment-act-may-leave-muslims-stateless-says-un-secretary-general-antnio-guterres/article30863390.ece> (accessed on 13 September 2020).

⁸² Sriram Lakshman, “CAA, NRC raised during Congressional hearing on global human rights.” *The Hindu*, January 29, 2020. <https://www.thehindu.com/news/international/caa-nrc-raised-during-congressional-hearing-on-global-human-rights/article30681185.ece> (accessed on 15 August 2020).

⁸³ “European Parliament debates anti-CAA motion, vote delayed till March,” *Press Trust of India*, January 30, 2020. <https://www.indiatoday.in/india/story/european-parliament-debates-anti-cao-motion-vote-delayed-till-march-1641429-2020-01-30> (accessed on 13 August 2020).

⁸⁴ “USCIRF Raises Serious Concerns and Eyes Sanctions Recommendations for Citizenship (Amendment) Bill in India, Which Passed Lower House Today.” 9 December 2019. <https://www.uscifr.gov/news-room/press-releases-statements/uscifr-raises-serious-concerns-and-eyes-sanctions> (accessed on 15 August 2020); “USCIRF members express concern over CAA; say it could result in ‘disenfranchisement’ of Muslims,” *Press Trust of India*, March 5, 2020. <https://economictimes.indiatimes.com/news/politics-and-nation/uscifr-members-express-concern-over-cao-say-it-could-result-in-disenfranchisement-of-muslims/articleshow/74491626.cms> (accessed on 15 August 2020).

⁸⁵ (Zahler 2009).

⁸⁶ Helen Regan, Priyali Sur and Vedika Sud, CNN, 24 April 2020 India’s Muslims feel targeted by rumors they’re spreading Covid-19, <https://edition.cnn.com/2020/04/23/asia/india-coronavirus-muslim-targeted-intl-hnk/index.html> (accessed on 23 December 2020).

⁸⁷ Nimisha Jaiswal DW News Meerut. <https://www.dw.com/en/india-covid-19-crisis-used-to-fuel-religious-hatred/av-53158999> (accessed on 23 December 2020).

⁸⁸ (Menon 2020) “Covid-19 Pandemic: Should You Believe What the Models say about India?”, <https://science.thewire.in/the-sciences/covid-19-pandemic-infectious-diseasetransmission-sir-seir-icmr-indiasim-agent-based-modelling/> (accessed on 26 December 2020).

find themselves blamed for the country's COVID-19 outbreak. Many Muslims have also been reportedly turned away from testing centers and health clinics due to such fears.⁸⁹

A congregation took place in the headquarters of Tablighi Jamat (an Islamic reformist movement) at New Delhi in 3 March 2020, drawing hundreds (1306) of foreign nationals from 41 countries, such as Thailand, Nepal, Myanmar, Indonesia, Bangladesh, Malaysia, Sri Lanka, and Kyrgyzstan.⁹⁰ As the COVID-19 lockdown came into force on 25 March 2020, around 1000 people were left stranded in these headquarters at New Delhi.⁹¹

The Indian government has been criticized for its poor preparation for the nationwide lockdown imposed in March 25, 2020, as they instead turned all their attention toward the three-day Tablighi Jamaat⁹² gathering held in Delhi in early March, which was vilified on local media and social media outlets. The right-wing nationalists deemed the meeting a sinister plot by Indian Muslims to deliberately infect the rest of the population instead of the virus spreading organically across the country⁹³. The Tablighi Jamaat congregation became the ultimate punching bag of the right-wing agenda.

Members of the ruling party, such as Chief Minister of Uttar Pradesh⁹⁴ and the Health Minister of Assam, made biased comments against Tablighi Jamat and Muslims in general. They are “smelling Corona Jihad behind all this” in reference to the gathering⁹⁵. The event has been linked to 1023 cases across 17 states—believed to have been spread by infected foreign attendees. The search for scapegoats during the coronavirus pandemic has focused squarely on the country's sizable Muslim minority, a community of 200 million that felt under threat even before the advent of COVID-19.⁹⁶

Speaking at a press conference, Joint Secretary in the Health Ministry said 4291 or about 30% of the coronavirus cases in the country had been traced to the Tablighi Jamaat congregation in Delhi out of 14,378 cases in the country. In Delhi, 63% of the reported 1707 cases were linked to the same gathering.⁹⁷

On 2 April, the Home Ministry identified 960 foreigners who took part in the event and blacklisted their visas for violation of The Foreigners Act, 1946 (by violating visa norms by entering India with a tourist visa and indulging illegally in missionary work), and the Disaster Management Act, 2005, and asked the Director General Police of respective states and union territories to initiate legal action against them⁹⁸. Over 3000 members of the Tablighi Jamaat subsequently spent more than 40 days in quarantine with government

⁸⁹ Misha Ketchell 21 May 2020, The conversation India's treatment of Muslims and migrants puts lives at risk during COVID-19, <https://theconversation.com/indias-treatment-of-muslims-and-migrants-puts-lives-at-risk-during-covid-19-136940> (accessed on 23 December 2020).

⁹⁰ IANS, The New Indian Express, 3rd April 2020, Foreigners from 41 countries joined Tablighi Jamaat in Delhi amid coronavirus crisis <https://www.newindianexpress.com/nation/2020/apr/03/foreigners-from-41-countries-joined-tablighi-jamaat-in-delhi-amid-coronavirus-crisis-2125256.html> (accessed on 23 December 2020).

⁹¹ Ibid.

⁹² The Tablighi Jamaat is an Islamic reformist movement formed in 1927 whose members travel around the world on proselytizing missions. It held a big gathering at its mosque headquarters in Delhi from March 13 to 15 in which member from over 40 countries participated.

⁹³ Shweta Desai, Amarnath Amarasingam, “#Coronajihad: Covid-19, misinformation, and anti-Muslim violence in India.” *Strong Cities* (26 May 2020): <https://strongcitiesnetwork.org/en/wp-content/uploads/sites/5/2020/06/CoronaJihad.pdf>. (accessed on 23 December 2020).

⁹⁴ The Economic Times May 03, 2020 CM blames Tablighi Jamaat members for spread of COVID-19 <https://economictimes.indiatimes.com/news/politics-and-nation/cm-adityanath-blames-tablighi-jamaat-members-for-spread-of-covid-19/articleshow/75514677.cms> (accessed on 26 December 2020).

⁹⁵ *The Hindu*, April 4, 2020 “Tablighi event: Shobha smells ‘Corona jihad,’” <https://www.thehindu.com/news/national/karnataka/tablighi-event-shobha-smells-corona-jihad/article31259288.ece> (accessed on 26 December 2020).

⁹⁶ Joanna Slater and Niha Masih April 24, 2020, The Washington Post, As the world looks for coronavirus scapegoats, Muslims are blamed in India https://www.washingtonpost.com/world/asia_pacific/as-world-looks-for-coronavirus-scapegoats-india-pins-blame-on-muslims/2020/04/22/3cb43430-7f3f-11ea-84c2-0792d8591911_story.html (accessed on 24 December 2020).

⁹⁷ Despite criticism, health ministry continues to refer to Tablighi Jamaat in covid-19 briefings. Wire. 18 April 2020. <https://thewire.in/government/health-ministry-covid-19-tablighi-jamaat> (accessed on 26 December 2020).

⁹⁸ *India Today*, 960 foreigners linked to Tablighi Jamaat blacklisted, visas cancelled by MHA. accessed on 24 December 2020.

authorities refusing to discharge them.⁹⁹ The Indian government levelled charges of culpable homicide at the Tablighi Jamaat chief.¹⁰⁰

The Tablighi Jamaat phase saw hate speech directed against one entire community—Muslims—with a visible impact on the ground, such as calls for economic and social boycott and physical violence against Muslims. Hate speech in this period was, in some instances, a clear incitement to genocide and sought to reduce Muslims to second class citizenship.¹⁰¹

5.2.2. Attacks on Muslims and Segregation

The government administration blocked Muslim vegetable vendors from selling their produce. Many Muslims were blocked from entering hospitals before taking a coronavirus test. Muslims all across India were attacked in the name of the COVID-19 surge¹⁰². Tamil Nadu became the first Indian state to set up detention centers for 129 foreign nationals who had stayed in Tablighi Center at North Delhi. All the cases were based on anti-Muslim sentiments rather than facts or evidence¹⁰³.

In the Una district in Himachal Pradesh, a man hanged himself due to taunts from fellow villagers for having come in contact with Tablighi Jamaat missionaries.¹⁰⁴ Several truckers belonging to the Muslim community were allegedly beaten up in Arunachal Pradesh, following which they fled to neighboring Assam leaving their vehicles behind, on 5 April 2020¹⁰⁵. A Muslim man in Delhi was beaten up by a mob that accused him of spreading coronavirus.¹⁰⁶ Both private and government-run hospitals have been accused of providing Muslim COVID-19 patients with lower-quality care. In the state of Gujarat, a government hospital placed Muslim and Hindu coronavirus patients in separate wards, prompting accusations of apartheid.¹⁰⁷ A bakery owner in the southern city of Chennai advertised that it did not employ any Muslims.

5.2.3. Rumors and Misinformation on Media

Mainstream India media propagated conspiracies of Muslims deliberately spreading coronavirus called “Corona Jihad”. This went viral on social media. Human rights watch groups condemned this Islamophobic campaign.¹⁰⁸

The Star of Mysore newspaper went to the extent of inciting genocide/ethnic cleansing of Muslims in India. The hate speech was soon followed by calls from across the country for a social and economic boycott of Muslims.¹⁰⁹ This hate speech is then supplemented with fake news and tangible action in terms of direct attacks on Muslim relief volunteers and socio-economic boycott of Muslims in public spaces. Divisive debates on television and xenophobic social media trends and hashtags have added fuel to the fire.

⁹⁹ PTL, Delhi govt to release Tablighi Jamaat members with no covid-19 symptoms from quarantine: High court told. New Indian Express. 15 May 2020. <https://indianexpress.com/article/cities/delhi/delhi-govt-to-release-tablighi-jamaat-members-with-no-covid-19-symptoms-from-quarantine-hc-told-6411387> (accessed on 23 Decemebr 2020).

¹⁰⁰ Bhardwaj A. Tablighi Jamaat chief Saad charged with culpable homicide for spread of covid-19. Print. 15 April 2020. <https://theprint.in/india/tablighi-jamaat-chief-saad-charged-with-culpable-homicide-for-spread-of-covid-19/402240> (accessed on 20 December 2020).

¹⁰¹ Shruti Menon 30 June BBC “Coronavirus: The human cost of fake news in India” <https://www.bbc.com/news/world-asia-india-53165436> (accessed on 26 December 2020).

¹⁰² Menon, Aditya (7 April 2020). Attacks on Muslims in the Name of COVID-19 Surge Across India. The Quint. Retrieved 16 December 2020.

¹⁰³ The Wire. “COVID, Communal Reporting and Centre’s Attempt to Use Independent Media as Alibi for Inaction”. Retrieved 16 December 2020.

¹⁰⁴ Mohan, Lalit (5 April 2020). “Taunted over coronavirus spread after Tablighi meet, Himachal man commits suicide”. *The Tribune (Chandigarh)*.

¹⁰⁵ CNN-News18. 5 April 2020. “Muslim Truckers ‘Beaten Up’ in Arunachal, Concern Over Supplies of Essential Items”. (accessed on 23 December 2020).

¹⁰⁶ Ellis-Petersen, Hannah; Azizur Rahman, Shaikh (13 April 2020). *The Guardian* “Coronavirus conspiracy theories targeting Muslims spread in India”.

¹⁰⁷ Special correspondence, The Hindu, 15 April 2020, Ahamdabad Coronavirus | COVID-19 patients segregated on basis of religion at Ahmedabad Civil Hospital, according to reports <https://www.thehindu.com/news/national/other-states/covid-19-patients-segregated-on-basis-of-religion-at-ahmedabad-civil-hospital-according-to-reports/article31344862.ece> (accessed on 23 December 2020).

¹⁰⁸ Jayshree Bajoria. *CoronaJihad is Only the Latest Manifestation: Islamophobia in India has Been Years in the Making*. Human Rights Watch. 1 May 2020. Retrieved 21 December Also see (Gettleman et al. 2020).

¹⁰⁹ Mohammed Afeef Wire 28 May 2020 Does Law Allow Calls to Boycott Muslims During the COVID-19 Lockdown? <https://thewire.in/communalism/covid-19-lockdown-muslims-boycott-law> (accessed on 21 December 2020).

5.3. Supreme Court Intervention

The Jamait Ulema-Hind filed a petition in the Supreme court drawing attention to the fake news blaming the community for the spike in COVID infection. The court was dealing with a petition complaining of the manner in which TV channels had demonized the Tablighi Jamaat amid the coronavirus lockdown.¹¹⁰

A Supreme court bench headed by the Chief Justice of India, which was hearing pleas of Jamiat Ulama-Hind and others alleging that a section of media was spreading communal hatred over the Tablighi Jamaat congregation during the onset of the COVID-19 pandemic, pulled up the Centre for its “evasive” and “brazen” affidavit on the issue.¹¹¹ News channels have misused the right to free speech, the Chief Justice of India said, and they asked the Centre to explain if it had taken any steps to curb the trend. “Freedom of speech is one of the most abused rights in recent times,” the CJI said.¹¹²

Judicial Proceedings

The court had, on August 24, framed the charges against the foreigners under sections 188 (disobedience to order duly promulgated by public servant) and 269 (negligent act likely to spread infection of disease dangerous to life) of the Indian Penal Code and Section 3 (disobeying regulation) of the Epidemic Act, 1897.¹¹³ Dozens of cases were filed against the non-Indian Tablighi Jamaat members by various Indian states, and hundreds of them were blacklisted from travelling to India for 10 years.¹¹⁴ Several countries have expressed concern over the continued custody of their nationals, and this became a diplomatic headache for the governments.¹¹⁵

On 15 December 2020, the court of Chief Metropolitan Magistrate, Delhi, dismissed all cases against detained foreigners, observing an utter lack of evidence. The court noted that the accused were not present at the site and were picked up from different places and maliciously prosecuted under the directions of controversial orders from the Ministry of Home Affairs.¹¹⁶

6. Conclusions

Religious freedom conditions in India have experienced a drastic turn downward, with religious minorities under increasing assault after the re-election of a right-wing government. In May 2019, the national government used its strengthened parliamentary majority to institute national level policies, violating religious freedom, particularly for Muslims¹¹⁷. The national government allowed violence against minorities and allowed hate speech.¹¹⁸ Even during the COVID-19 pandemic, the search for scapegoats has focused squarely on the country’s sizable minority, a community of 200 million that felt under threat even before the advent of COVID-19.¹¹⁹

Some of the neighboring governments, such as Myanmar, Sri Lanka, and Pakistan are using the coronavirus pandemic to divert attention from their crimes they have committed,

¹¹⁰ Smanwaya Rautray The Economic Times 17 November 2020 Demonising Tablighi Jamaat: SC seeks to know mechanism to deal with complaints on TV content. <https://economictimes.indiatimes.com/news/politics-and-nation/sc-not-satisfied-with-centres-affidavit-on-pleas-over-tablighi-congregation-media-reporting/articleshow/79259347.cms> (accessed on 21 December 2020).

¹¹¹ Smanwaya Rautray The Economic Times Oct 08, 2020, Tablighi case: Freedom of speech & expression most abused right in recent times, says SC. <https://economictimes.indiatimes.com/news/politics-and-nation/tablighi-case-freedom-of-speech-expression-most-abused-right-in-recent-times-says-sc/articleshow/78550618.cms> (accessed on 24 December 2020).

¹¹² Ibid The Economic Times, 8 October 2020.

¹¹³ The Indian Express. 16 December 2020. *Tablighi case: All foreigners freed, court slams police, says no proof*. Retrieved 28 December 2020.

¹¹⁴ Bilal Kuchay Aljazeera 16 Dec 2020 India court acquits foreigners over Tabligh event during pandemic, Court says prosecution failed to prove presence of 36 foreigners inside the Muslim missionary movement’s headquarters.

¹¹⁵ Suhasni Haider, The Hindu 23 August 2020.

¹¹⁶ Ibid.

¹¹⁷ USCIRF | ANNUAL REPORT 2020, USCIRF–RECOMMENDED FOR COUNTRIES OF PARTICULAR CONCERN (CPC) Available online: <https://www.uscifr.gov/sites/default/files/India.pdf> (accessed on 4 July 2020).

¹¹⁸ Ibid.

¹¹⁹ Supra n.146 Joanna Slater and Niha Masih 24 April 2020, The Washington Post.

and continue to commit, against minorities in their countries.¹²⁰ The outbreak of COVID-19 in India has presented yet another opportunity to launch a fresh physical, verbal, and psychological attack on the Muslim minority.

There is also evidence that much remains to be done. Many minorities are subject to serious and persistent violations of their basic rights. Unresolved situations and conflicts involving minorities indicate that further measures to address minority issues must be adopted, and new avenues of conflict resolution need to be sought. The effective implementation of the non-discrimination provisions and special rights, as well as of the resolutions and recommendations of the various organs and bodies of the United Nations, can contribute to meeting the aspirations of minorities, and to the peaceful accommodation of different groups within a State. Tolerance, mutual understanding, and pluralism should be nurtured and fostered through human rights education, confidence-building measures, and dialogue.

Although India describes itself as a secular, democratic nation, several constitutional provisions and laws, including anti-conversion and cow-protection legislation, fuel anti-minority sentiments. Communalism is becoming heightened, and lynch mobs are set in motion to divide and intimidate the working class and poorer sections of society for political reasons.

‘India should provide more effective protection for human rights defenders, by removing the legal obstacles and societal repression undermining their legitimate activities to promote and protect human rights’.¹²¹ In addition to the physical protection of those threatened by communal violence, much of the discourse under this frame is concerned with legal protections. The Government should enact a special ‘witness protection’ law to protect the lives of witnesses associated with cases of communal incidents. Across the country, a large number of witnesses turn hostile in courts and the conviction rates for communal crimes are low; therefore, there is a need to create legal provisions for witnesses to feel secure so that justice is not compromised.

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¹²⁰ Omar Suleiman, Aljazeera 20 May 2020 Like India, Sri Lanka is using coronavirus to stigmatise Muslims <https://www.aljazeera.com/opinions/20/5/20/like-india-sri-lanka-is-using-coronavirus-to-stigmatise-muslims> (accessed on 24 December 2020).

¹²¹ Christian Solidarity Worldwide, Submission to the Third Cycle UPR(NY: UN, 2016), p. 8.

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