

**Equality to Second Class:
India's Governance of its Muslim Minority**

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Jama Masjid Old Delhi

India is not only the biggest democracy in the world, but it also has the largest religious minority in the world. If Indian Muslims, who are about two hundred million, constituted a country, they would be the eighth most populous nation in the world. The scale of challenge for minority governance is truly off the chart. Given that, and the historical reality of faith-based

division of the Indian sub-continent, India deserves respect for choosing a secular path and maintaining political as well as cultural environments that, despite frequent flareups and fault lines, have remained democratic, tolerant, and pluralistic. India's pluralism is twofold – religious as well as political. India has a wide range of political parties engaged in its political system, ranging from far-right parties like the Bharatiya Janata Party (BJP) and over a dozen regional and national far-left parties. India is also home to many religions who enjoy a great degree of religious freedoms; there are nearly a billion Hindus, two hundred million Muslims, thirty million Christians, over twenty million Sikhs, and more Indian Buddhists than people in most Scandinavian countries.¹

In this brief essay, we explore how India governs its Muslim minority population. We divide our assessment into four sections. In the first section, we examine the constitutional status of Muslim minorities. In the second section, we discuss very briefly how the constitution has been understood as manifested by Muslim political reality until 2014 when the far-right, anti-Muslim, Hindu nationalist BJP became a dominant force in Indian politics and formed the government with an absolute majority in the parliament after an unprecedented election victory. In the third and fourth sections, we show how the protection of fundamental rights and minority rights of Muslims is declining and state-enabled and -sponsored discriminatory policies and laws are on the rise. We also argue that anti-Muslim violence by hate groups are both incited and protected by political parties and government institutions, including the police and judiciary.

¹ See Census data: https://censusindia.gov.in/census_And_You/religion.aspx

The Constitutional Rights of Indian Muslims

The Indian constitution does not define a Muslim. In fact, the word Islam does not occur in the Indian constitution and Muslims are mentioned only in reference to Aligarh Muslim University. It also includes Sikhs and Buddhists under the rubric of Hinduism, making India look more Hindu than it is. However, India's constitution states explicitly in its preamble that India is a secular democratic republic. For decades, the political discourse in India operated under this assumption that India is a secular state and, hence, all religions and all communities should be treated equally. Indeed, the constitution is very clear about the rights and duties of religious minorities and their religious and cultural privileges are explicitly delineated in Articles 25-30 while the general articulation of fundamental rights in Articles 12-24 also applies to them.

Additionally, the Indian constitution is not the only source of India's laws. The colonial legacy has left a very strong shadow on India's legal system and juridical tradition; therefore, many laws that were passed when India was a British colony are still in force and were not abrogated by the Indian constitution. Thus, the Muslim Personal Law (MPL), which is based on the *Shariat* Act of 1937, enacted ten years before India's independence, remains operative in spite of the fact that Article 44 of the constitution aspires to implement a uniform civil code in the nation. The MPL allows Muslims a semblance of religious autonomy and limited freedom to follow a few Shari'ah-based rules pertaining to marriage and inheritance. It enables Muslims to maintain a political and constitutional identity distinct from Hindus and is valued more for this than its role in observance of the Islamic faith. Even the rising tide of Hindu nationalism accepts the secular character of India when its ideologues criticize the Muslim Personal Law as special

dispensations or concessions to Muslims, instead demanding adherence to the constitution's uniform civil code.

To sum up, despite its subtle bias in favor of Hinduism,² the Indian constitution is very secular and does concede much autonomy and freedom to religious minorities. It permits religious minorities to manage their own religious affairs (Article 26) and to be exempt from paying any kind of taxes for promoting any specific religion (Article 27). No one can be compelled to attend any religious instruction or worship at a state or state-supported institution (Article 28). Article 14 of the constitution recognizes equality of all before the law; Article 15 underscores the prohibition of discrimination based on "religion, race, caste, sex or place of birth."³ Article 16 acknowledges equal opportunity for public employment whereas Article 29 ensures the right of minorities to preserve their language, culture, and heritage. Article 30 allows the establishment and governance of educational institutions by minorities for minorities and, finally, Article 325 states that all people irrespective of their religion, race, caste, or sex are eligible to participate in the election. One can safely assert that the Indian constitution does not endorse discrimination against any religious community, Muslims included.⁴

² Pritam Singh acknowledges some admirable progressive features of the Indian constitution, but also exposes its Hindu bias as symptomatic of the depth of institutionalized Hindu communalism in India and the shallowness of the secular foundations of the Indian republic. See Singh, Pritam. "Hindu bias in India's 'secular' constitution: Probing flaws in the instruments of governance." *Third World Quarterly* 26, no. 6 (2005): 909-926.

³ "The constitution of India." Accessed May 19, 2021.

https://legislative.gov.in/sites/default/files/COI_1.pdf.

⁴ Khalidi, Omar. "Hinduising India: Secularism in practice." *Third World Quarterly* 29, no. 8 (2008): 1545-1562

The Political Reality of Indian Muslims until 2014

Deepa Das Acevedo makes an interesting observation about India's political architecture. She argues that while the Indian constitution posits secularism as the political foundation of the Indian state, it does not enshrine a separation of state and religion.⁵ Thus, she asserts that Indian secularism is particular to the Indian context, eschewing the establishment of religion but not separating state from religion. Anyone who has lived in India and participated in state-run institutions such as schools and other government agencies would immediately realize that the state has treated Hindu religion and its practices as a default culture of India. State institutions often start functions and ceremonies with Hindu prayers, thousands of Hindu temples are supported by state resources,⁶ and even state-funded television programming does not abstain from preaching and glorifying Hindu mythology. The production and broadcasting of *Ramayana* and *Mahabharat* by the national television are nothing but state-sponsored instruction of religion to the masses. They not only subverted the secular foundation of Indian culture but promoted Hindu nationalism on the state's dime and may have contributed to the vandalism of Muslim places of worship, especially the Babri Masjid, by a communalized Hindu majority.⁷ The Babri Masjid was destroyed by Hindu

⁵ Das Acevedo, Deepa. "Secularism in the Indian context." *Law & Social Inquiry* 38, no. 1 (2013): 138-167.

⁶ See Suhrith Parthasarathy, "How Hinduism was nationalized." Mint. <https://www.livemint.com/Sundayapp/FU6sreM7t13piRRwkvdkfP/Secularism-and-principled-distance-How-Hinduism-was-nationa.html>

⁷ Rajagopal, Arvind. *Politics after television: Hindu nationalism and the reshaping of the public in India*. Cambridge University Press, 2001.

nationalists in an act of egregious vandalism only four years after the broadcast of the serialized *Ramayana* to the national audience over 78 weeks; such programming constitutes state-funded indoctrination of a nation on one religion.⁸ These programs should be unconstitutional in a secular nation but, as experts argue, India's shallow secularity accommodates religious indoctrination. This trend of presenting India as a fundamentally Hindu nation is now part of the Indian film and television industry as indicated by more and more movies like *Padmaavat*, produced by profit-seeking private enterprises.⁹

Article 25 of the Indian constitution gives its citizens the freedom to profess, practice, and propagate their religion. This is a constitutional right of Muslims. They should be able to say they are Muslims, fast, pray, celebrate their festivals, and also promote and propagate their faith (in other words, exercise *Da'wah*). However, the political reality is far from this. In many states that are governed by Hindu nationalists, laws have been passed which prohibit religious conversion, unless it is to Hinduism, and also prohibit marriages that involve religious conversions. These laws are notorious as "Love Jihad" laws, because they are premised on a bigoted and false assumption that Muslims are waging Jihad against Hindus by converting

⁸ Mankekar, Purnima. "Mediating modernities: The Ramayan and the creation of community and nation." In *Screening Culture, Viewing Politics*, pp. 165-223. Duke University Press, 1999. See also Mitra, Ananda. "Television and the Nation: Doordarshan's India." *Media Asia* 20, no. 1 (1993): 39-44.

⁹ Kaur, Rachana R. "Controversial Bollywood film Padmaavat panders to hardline Hindu nationalism." *Now Magazine*. Accessed June 4, 2021. <https://nowtoronto.com/movies/reviews/bollywood-film-padmaavat-panders-to-hardline-nationalism>

Hindu women to Islam by marrying them.¹⁰ These laws that are now being hoisted by Hindu nationalists are the tip of the iceberg and reflect the widening chasm between secularism and religious freedom that is enshrined in the Indian constitution. India is rapidly transforming into a Hindu state completely out of sync with its own constitution.

In 1990, the BJP leader, L. K. Advani, began a mass movement to destroy the Babri Mosque in Ayodhya and replace it with a temple for one of the Hindu gods, Ram. The movement started as a mobile rally from Somnath in Gujarat to Ayodhya in Uttar Pradesh. This *Ram Rath Yatra*, a chariot journey, captured the imagination of the nation and the tropes used during the rally became embedded in Indian culture and radicalized the population. The tropes essentially projected Muslims as foreign invaders and the resolve to demolish the Babri Mosque became the rallying cry for Hindu nationalism. The mosque was ultimately razed on December 6, 1992. This was allowed to happen while India was still governed by political parties that are supposedly secular and inclusive. The point of highlighting this epic act of religious vandalism is to underscore the fact that even before Hindu nationalists came to power in 2014, India's political environment and culture, in spite of its secular constitution, had become Islamophobic and infused with *Hindutva* ideology.

The Age of *Hindutva*: The First Innings

In the general elections of 2014, the Hindu nationalist party came to power and it heralded the beginning of an era of state-sponsored Islamophobia in India. *Hindutva* is an

¹⁰ Sinha, Chinki. "India's interfaith couples on edge after new law." BBC. Accessed May 20, 2021. <https://www.bbc.com/news/world-asia-india-56330206>

ideology that equates Indianness with being exclusively Hindu. It seeks to subvert the secular and pluralistic aspirations of India and is trying to set it on a path that will eventually make it a Hindu state with Hindu ethos as the dominant feature of the national culture. Islam is the second largest religion of India with over two hundred million adherents and Muslim culture has deep historical roots and is profusely embedded in India's heritage. Its existence remains a barrier to the Hinduization of India and the *Sangh Parivar* (family or cluster of *Hindutva* advocating organizations, movements, and parties) are determined to erase or at least marginalize Islam. After gaining majority in the parliament in the 2014 elections, the political branch of the *Hindutva* family, the BJP began an accelerated process of alienating Muslims and adopted three strategies to this end: (1) undermining the legal framework that protects Muslims, (2) encouraging non-state actors to use violence against Muslims, and (3) pushing forward an agenda of cultural erasure.

The *Hindutva* attack on the legal framework that protects religious minorities has a two-pronged strategy. There is a concerted effort to (1) undermine the secular nature of the Indian constitution and (2) to eliminate the non-constitutional sources of minority rights. As discussed earlier one of the elements that determines how India governs its minorities is the set of laws under the rubric of Muslim Personal Law (MPL). More than enabling Muslims to adhere to their faith, the MPL helps Muslims preserve their collective religious identity and also keeps India a religiously pluralistic democracy. When Shayara Bano filed a case against Triple *Talaq* in 2016, Hindu nationalists seized on an opportunity to strike a blow at MPL by initiating a juristic and legislative process that ultimately passed the Muslim Women (Protection of Rights on Marriage) Act of 2019 which criminalized Triple *Talaq*. Triple *Talaq* was a divorce procedure

deemed Islamic according to the MPL. Some Muslims, the authors included, are critical of this practice and would have appreciated a reform process from within the community.

Nevertheless, what the state did was to essentially undercut and reduce the religious autonomy that Muslims as a minority enjoyed in India since independence until Hindu nationalists came to power.

In the wake of the electoral victories indicating that *Hindutva* is on the rise with BJP receiving 31% of the national vote, harassment of religious minorities and lower-caste Hindus became ascendant. Hindu gangs associated with and protected by both police and politicians in BJP-ruled states began targeting Muslims. Riots that unleash organized violence, public beatings by thugs while cops watch, and destruction of property of Muslims, both residential and business, are now routine. The most egregious form of harassment has been mob lynching of Muslims accused of slaughtering cows, eating beef, and even in trafficking beef by vigilantes called *Gau Rakshak Dals* or Cow Protector Gangs.¹¹ This cow vigilantism not only impacts what Muslims can eat, but also hurts the business of Muslims and low-caste Hindus who have for centuries been part of the beef business. So many cases have been recorded of this state-enabled violence against Muslims that the U.S. Commission on International Religious Freedom has recommended that India be designated a Country of Particular Concern (CPC).

Allahabad is an important city in Central India, named by Mughal Emperor Akbar nearly 425 years ago. This prominent 16th century city has now been renamed *Prayagraj* and the Faizabad district was renamed Ayodhya. This process of renaming iconic cities and places which

¹¹ "Violent cow protection in India." Human Rights Watch. Accessed May 22, 2021. <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities#>

have Muslim names for centuries to Hindu names has now become a key strategy for erasing Muslim heritage and India's Islamic past. The message that Islam and Muslims have no place in *Hindutva's* imagination of India is loud and clear.¹² Even as BJP's governance was being exposed as misdirected and detrimental to India's economic well-being,¹³ its political and cultural policies, popular with Hindu nationalists, are creating an existential crisis for Muslims in India.

State-Sponsored Islamophobia: *Hindutva's* Second Innings

Even though many of BJP's economic policies proved to be detrimental, it easily won an absolute majority in the national elections of 2019. It gained 21 more seats in the Parliament and got 37% of the vote, 6% more than in 2014. BJP and its partners won 45% of the vote. The results illustrated that while two-thirds of the nation was still not committed to the Hindu ideology, a little less than half of the electorate was willing to support it directly or through alliances. The most troubling consequence of this election was the realization that oppressing the Muslim minority would not be a risk for Hindu nationalists at the polls. The BJP could have

¹² Biswas, Soutik. "Is India waging a 'war' on Islamic names?" BBC. Accessed June 4, 2021. <https://www.bbc.com/news/world-asia-india-46191239>

Sen, Sudipta. "Tampering with history: How India's ruling party is erasing the Muslim heritage of the nation's cities." The Conversation. Accessed June 4, 2021. <https://theconversation.com/tampering-with-history-how-indias-ruling-party-is-erasing-the-muslim-heritage-of-the-nations-cities-116160>

¹³ Subramanya, Rupa. "Modi has failed to reform India's economy. Populist tricks are all he has left." The Washington Post. Accessed June 4, 2021. <https://www.washingtonpost.com/opinions/2019/01/15/modi-has-failed-reform-indias-economy-populist-tricks-are-all-he-has-left/>

really bad governance, but as long as it took steps to marginalize and undermine Muslims, it would not suffer at the polls. Perhaps this realization that the culture wars were more important than governance shaped the giant steps towards Hinduization of India taken by PM Narendra Modi's government in the first year of its second term.

In August 2019, within months of winning the second term, the Modi government abolished the special status of the Muslim majority state of Kashmir. Articles 370 and 35A of the Indian constitution provided Kashmir constitutional autonomy and granted its residents a residency status that prevented the demographic alteration of the state.¹⁴ These were part of the conditions under which the Kingdom of Kashmir had acceded to India in 1947. The manner in which Kashmir's special status was revoked – after introducing a heavy military presence in the state, placing its entire population under curfew and lockdown, cutting off its internet access, along with arresting local leaders – was clearly undemocratic and akin to a military annexation. The heavy handed political and constitutional transformation of the only Muslim majority state in India has now opened it to demographic and political reengineering according to the ideological goals of Hindu nationalism. Kashmir's special status along with the Babri Masjid were two issues which Hindu nationalists had for decades claimed appealed Muslims of India. They had used these issues to radicalize the population and in their second term, with an exclusive majority in the parliament, they constitutionally annexed Kashmir.

¹⁴ Kashmir special status explained: What are Articles 370 and 35A?" Al Jazeera. Accessed May 22, 2021. <https://www.aljazeera.com/news/2019/8/5/kashmir-special-status-explained-what-are-articles-370-and-35a>

In November of the same year, the Supreme Court of India finally delivered its verdict on the Babri Masjid-Ram Temple dispute. While acknowledging that the mosque was illegally vandalized by Hindu extremists, it privileged religious beliefs over facts and granted the land to the government to institute a commission that would construct a temple to Ram at the spot. The court also directed the government to provide Muslims with land at an alternate location in the city of Ayodhya to build a mosque. The Indian Supreme Court basically succumbed to the pressures from the *Hindutva* forces. However, in the process, it also dealt a huge blow to the legitimacy and political independence of the Indian judiciary. Muslim minorities now fear that the Indian courts would rather rule according to Hindu mythology than historical and legal facts.

The biggest step that the Hindu nationalist government took to undermine the status of Indian Muslims was in December 2019 when it passed the Citizenship Amendment Act (CAA). The law basically provides a pathway to refugees from Pakistan, Bangladesh, and Afghanistan who are not Muslim; by prioritizing non-Muslims, it discriminates against Muslims on religious grounds.¹⁵ The lawmakers argue that the said countries are Muslim nations with a record of discrimination against their non-Muslim minorities and, hence, India should provide refuge to them, especially the Hindu refugees. Yet these countries also violate the rights of Muslim groups. The case of discrimination against Ahmadiyya Muslims in Pakistan is well known¹⁶.

¹⁵ Regan, Helen, Gupta, Swati, and Khan, Omar. "India passes controversial citizenship bill that excludes Muslims." CNN. Accessed May 21, 2021.
<https://www.cnn.com/2019/12/11/asia/india-citizenship-amendment-bill-intl-hnk>

¹⁶ Uddin, Asma T. "A legal analysis of Ahmadi persecution in Pakistan." In *State Responses to Minority Religions*, pp. 81-97. Routledge, 2017. Also see Rahman, Fatima Zainab. "State

While on face value, it appears that this law only discriminates against Muslims of neighboring nations, experts have argued and journalists have documented that, in fact, CAA in combination with the National Register of Citizenship (NRC) would render millions of Indian Muslims stateless.¹⁷ In North East India where the NRC has been applied, two million people have been left stateless. So, when CAA is applied in conjunction with the NRC, all the people unable to prove citizenship will be declared stateless and everyone – except Muslims – would be given a pathway to citizenship as refugees. This move has been seen as a major assault on India’s Muslims and it triggered sustained protests all over the country. As can be seen from the above, the first six months of the second term of Narendra Modi’s government was one assault after another on Indian Muslims’ constitutional status and heritage.

Closing Thoughts

From Europe to Australia, not just countries but entire continents are struggling to integrate their growing Muslim populations. Religious, cultural, and particularly political differences with Muslim minorities have posed serious challenges to many Western nations, including integrating Muslims into the local socio-cultural milieu. Even in Asia, where Islam has deeper roots, China is unable to deal with its Uyghur Muslim population in a civilized way. However, astonishingly, one country where Muslims have been at home for more than a

restrictions on the Ahmadiyya sect in Indonesia and Pakistan: Islam or political survival?" *Australian Journal of Political Science* 49, no. 3 (2014): 408-422.

¹⁷ Sur, Priyali. "A year after rendering millions stateless, India has yet to hear a single appeal." *Foreign Policy*. Accessed June 4, 2021. <https://foreignpolicy.com/2020/09/10/2-million-people-india-assam-stateless-year-nrc/>

millennium and are seamlessly integrated – India – is trying its hardest to alienate, disenfranchise, and essentially disintegrate them. It appears that the *Hindutva* movement and the Narendra Modi government are determined to marginalize Muslims and dismantle the communal bonds that hold the nation together. In an effort to create an exclusivist Hindu *Rashtra* (state) out of a multifaith populace, the Indian government is trying to both erase and disenfranchise Muslims.¹⁸

It is our assessment that India's historical precedence as well as the constitution allows for robust protection of its Muslim minority through particular privileges such as the Muslim Personal Law and fundamental rights available to all Indians irrespective of religion. Yet the rise of Hindu nationalism has imperiled India's secularity and its character as a liberal democracy that guarantees religious freedoms, does not establish religion, and protects individual fundamental rights. Already India has slipped on the democracy index from 41 in 2018 to 53 in 2020.¹⁹ It is now labelled as an electoral autocracy. In seeking to marginalize Muslims, the *Hindutva* brigade is destroying the communal harmony and democratic nature of India. The fate of Indian Muslims is tied to the fate of secularism and democracy in India and, at the moment, neither is secure.

Author Bios

¹⁸ Khan, Muqtedar. "(Dis)Integrating Muslims, dismantling India." The Diplomat. Accessed June 4, 2021. <https://thediplomat.com/2019/12/disintegrating-muslims-dismantling-india/>

¹⁹Biswas, Soutik. "'Electoral autocracy': The downgrading of India's democracy." BBC. Accessed June 4, 2021. <https://www.bbc.com/news/world-asia-india-56393944>



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