Majoritarian Consolidation: Chronicling the Undermining of the Secular Republic
Citizens Against Hate (CAH) is a Delhi-based collective of individuals and groups committed to a democratic, secular and caring India. It is an open collective, with members drawn from a wide range of backgrounds who are concerned about the growing hold of exclusionary tendencies in society, and the weakening of rule of law and justice institutions. CAH was formed in 2017, in response to the rising trend of hate mobilisation and crimes, specifically the surge in cases of lynching and vigilante violence, to document violations, provide victim support and engage with institutions for improved justice and policy reforms. From 2018, CAH has also been working with those affected by NRC process in Assam, documenting exclusions, building local networks, and providing practical help to victims in making claims to rights. Throughout, we have also worked on other forms of violations – hate speech, sexual violence and state violence, among others in Bihar, Haryana, Kashmir, Rajasthan, Uttar Pradesh. Our approach to addressing the justice challenge facing particularly vulnerable communities is through research, outreach and advocacy; and to provide practical help to survivors in their struggles, also nurturing them to become agents of change.

This anthology is the product of year-long research and documentation work of the CAH team made up of human rights experts, lawyers and researchers. Members of the team and volunteers included (in alphabetical order) Abdul Batin Khandekar, Aliya, Abhimanyu Suresh, Adeela Firdous, Anupriya Shome, Essar Batool, Farhad Ali Ahmad, Ghazala Jamil, Khursheed, Mangla Verma, Misbah Reshi, Mudabbir Hassan, Sabira Bashir, Sajjad Hassan, Seema Nair, Shahjahan Ali Ahmad and Umair Gul. Mathew Jacob, Mushtaq Malla and Sharib Ali provided able guidance.

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Majoritarian Consolidation:
Chronicling the Undermining of the Secular Republic

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Citizens Against Hate, New Delhi
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1. Introduction: Chronicling the Undermining of the Secular Republic

Among various experiments to create democracy in decolonised countries, Indian democracy was considered something of a marvel. Indian experience of democracy was judged substantially successful and the international image that India developed over 5 to 6 decades was that of a modern, democratic state with stable legislature, independent judiciary, and mostly efficient executive. A multi-party system that accommodated representation of numerous sections in a vastly diverse country ensured social engineering through policy and elections. It would perhaps be fair to say that events where civil liberties and human rights of Indian citizens were infringed, were seen as exceptions which the system could deal with.

The chapters in this volume – an anthology of briefing papers published by Citizens Against Hate over the past year - attempt to capture how this idea of India is under grave stress due to the momentum gained by cultural transformation project of Hindutva (political Hindu nationalism). Lately, events and happenings that in the past would have been characterised as exceptional, have been occurring with alarming frequency. These go to undermine the secular foundations of the Indian republic and the rights of its citizens, causing a rupture in the democratisation project. Each of the chapters to follow examines in detail, the socio-legal and juridico-political manifestations of the majoritarian project, contributing to this stress. The anthology is a plea that if India is to remain a truly democratic state the prolonged periods and amplified frequency of ‘state of exception’ created by the various arms of Indian state has to be challenged.

Since after coming to power for a second term in May 2019 with a ‘brute majority’, the ruling Bharatiya Janata Party (BJP) seems to be a party in a hurry. In less than a year it has precipitated a slew of events in the country which involved legislative measures that were aimed at gesturing to Muslim minorities a will to brutally subjugate. First was a law outlawing a form of divorce which also criminalised Muslim men who attempted to pronounce divorce thus. Next was the abrogation of Article 370 of the constitution, taking away the autonomy of the only Muslim majority state in the country. Subsequently, in December 2019 an amendment in

1 Unilateral divorce by a Muslim man uttering the word ‘talaq’ three times in one sitting. In the law while the utterance was deemed void and not having affected the divorce in the new law, it was still

2 Comparable autonomy remained in place for several other states in the country through Articles 371 A-J
the Citizenship Act was passed which opened a pathway for a category\(^3\) of illegal immigrants, leaving out Muslims. Not stopping at this, BJP leaders also claimed credit that the final judgement of the long-standing dispute to a claim to the site of a demolished mosque in the city of Ayodhya in Uttar Pradesh had been settled in favour of parties that had demolished the Babri Mosque.\(^4\)

Amidst this relentless attack on the secular fabric of the nation and its principal religious minority, the importance of the role of political opposition is being felt in India only through its depletion. While the weakness of the parliamentary opposition is a numerical reality, the fact of the weakening of political opposition also outside the parliament cannot be denied.

The framing of this anthology is to serve as an index of discrimination and censorship that are creating a context of diminution of rights of the citizens. Reading through the various sections we can read the intensification of ‘rightlessness’ by putting in place the legal apparatus of impunity through the use of technology. Alongside a tendency to ‘rule by circulars’ materialises executive power outside the framework of constitutional law. Together these actions are designed to change the very relationship between society and law.

The first section of the compendium deals with hate speech and targeted violence. While the BJP, along with its affiliated groups, has never been averse to violence, in its second term the government appears to have developed a bolder stance to violence. It no longer needs to mobilise it through proxy issues like cow slaughter. From the senior-most ministers, all the way down to party cadres and sympathisers—all are much more open about their agenda of hate. This has been apparent in their election campaigns in state legislative assemblies to the floor of the parliament.

Not surprising then that television news media, particularly Hindi channels, have remained at the forefront of mainstreaming politically motivated incendiary speech. They pick up their cues from the ministers in the government, senior ruling party functionaries, and other members of the larger Rashtriya Swayamsewak Sangh (RSS) ecosystem. At the expense of urgent and important issues, they broadcast polarising debates on topics that overwhelmingly focus on and vilify

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\(^3\) Hindus, Buddhists, Jains, Sikhs, Parsis and Christians from three Muslim majority community Pakistan, Afghanistan and Bangladesh.

\(^4\) It was claimed that the Babri Mosque had been built centuries ago by demolishing a structure of Hindu significance at the exact site of Lord Rama’s birth place. In its judgement the Supreme Court of India held the demolition illegal.
Introduction: Chronicling the Undermining of the Secular Republic

minorities, students in higher education, civil society activists and outfits, artists and intellectuals, and opposition parties - virtually any critical view against the incumbent government.

These form the larger backdrop for misinformation and propaganda campaigns both on social media platforms as well as mobile individual and group chat applications, whereby pejorative terms for institutions and communities, aspersed identities, damaging stereotypes and discourses are normalised. And as the chapter on the violence in Bihar amply displays, the upcoming assembly elections, like earlier occasions, will probably see an attempt for sharper polarisation along religious faultlines. We had a glimpse of how hate speech can we weaponised to achieve violent outcomes in the just concluded mayhem in Delhi that has left over 40 dead and scores injured, amid untold destruction.

The second section is on Assam NRC (National Register of Citizenship). The chapter underscores the need for an honest discussion on violence against minorities that led to the discussion on Assam Accord. The need of the Assamese society to contend with its past of horrific violence against minorities, cannot only be answered through electoral and realpolitik. In the aftermath of Assam NRC the current dominant Assamese discourse of anti-CAA but pro-NRC has queered the pitch and threatens to fracture the progressive consensus on the issues of citizenship, especially the current onslaught by the BJP.

Next section contains chapters on Kashmir. The snatching away of Kashmir’s autonomy and further whittling of civil liberties in the state has intensified. This is also a mode of governance that the regime is testing in other parts of the country, to quell dissent and closely control citizens. Detention of children in Kashmir is a matter of grave concern. A country that has the opportunity to build upon the so-called demographic dividend, India being one of the youngest demographic across the world, is criminalising and brutalising its children. This hostility can be read in conjunction with the tendency of the regime, elsewhere in the country, to leave no opportunity to provoke and take issues with young students, lowering of age in labour laws and tried as adults in some criminal cases. In case of Kashmir’s children the Supreme Court has acted like executive court.

The use of pellet-firing guns in Kashmir is a blatant exception. Nowhere else does the Indian state use such weapons over protesting citizens. On one hand is the increased use of technology--from surveillance to militarisation of civil forces, while on the other hand Kashmir residents have been denied access to Internet.
for months on end without any accountability whatsoever to any institution, as the chapter seeking to map the hardships, seventh month into the shutdown attempts. As mentioned above, the will to exceptionally brutalise Kashmiris is perhaps a template which the regime is attempting to replicate elsewhere.

The penultimate section pertains to the Citizenship (Amendment) Act 2019. The architecture of CAA is beset by arbitrary categorisation and targeted exclusion which are together aimed at extending the false account about Muslims as aggressors in India. This is achieved by gesturing at Muslim majority countries in the region and mentioning persecuted minorities of those countries. Not only the idea of India as a plural, secular republic has been thrown in a disarray but also that the CAA imperils the precarious balance between the countries which share a legacy of past fault-lines that run across the international borders in the South Asian region.

The chapter on state’s repression of the protests against CAA is a story of use of excessive force, custodial torture, and connivance of the police with private armed assailants. Apart from the attack on person and bodily harm, the violence is extended to target livelihoods and economic strength. Executive action flying in the face of established laws, rules laid down by the courts, and even police procedure, is in blatant and in full view. Draconian and extraordinary laws (registering cases on charges of sedition, UAPA etc) are being invoked routinely to deal with peaceful protestors.

The final section of the compendium presents an analysis of the scenario in contemporary India where the actions of the Indian judiciary has left a lot to be desired. The first chapter recounts the experience of cow vigilante violence cases through the justice system, showing how anti-minority prejudice in police and prosecution combines with the weaknesses of a broken justice system and the absence of hate crime laws to ensure that justice for victims of some of the most brutal yet televised violence in recent India continues to be out of reach. The concluding chapter of the volume shines a light on the role of higher judiciary, and how it is struggling with its core remit, viz. to protect citizens against executive excess, putting at risk not just the rights of minorities, but also India’s secular framework.

But it has to be said that citizens, cause lawyers and petitioners, are through their engagements with the justice system, asserting that the courts ought to act as critical sites for life and liberty. This has given rise to a discourse not just
on judicial independence of the institution, but also judicial courage as a virtue that judges should possess. Constitutionalism has long been a fetish in India. The current resistance displays a will of the citizens to save constitutionalism from being reduced to a hollow shell and to bring it to life by practising it.

The other and perhaps more fruitful site of resistance, is people’s movements sweeping the length and breadth of the country, inspired by the spontaneous sit-in at one of Delhi’s largest Muslim ghettos, Shaheen Bagh. These Muslim women-led anti-CAA protests, in towns big and small and villages, supported by a coalition of progressive student and civil society groups, and opposition parties, have become occasions for citizens to reclaim the idea of India as a secular democratic republic. Claiming their Indian citizenship in the most visible manner, as Muslims and as Indians, protesters are not just demanding protection of their legal citizenship, but also their rights as equal citizens to participate in the political process.

But it is precisely this demand for equal rights by the marginalised, made on an all-inclusive platform, that the ruling dispensation is loath to tolerate. The crackdown we saw against anti-CAA protesters in Uttar Pradesh in December 2019 was one manifestation of this intolerance. In Delhi, home to Shaheen Bagh, and an active media and civil society presence, it took a more sinister form – turning the crackdown there into civil strife, with the clear intent to shut down people’s voices. Violence coordinated between senior members of the ruling party, violent Hindutva groups and the Delhi Police, that lasted for well over 4 days (23-27th February), has left reported 42 persons dead, scores injured, several mosques and Muslim shrines torched and property and businesses selectively destroyed. Majoritarian groups are now reportedly turning their attention to Shaheen Bagh protest site as well as that in Lucknow’s Ghanta Ghar.

The future seems uncertain.

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5 https://thewire.in/communalism/delhi-riots-fact-finding-report
https://www.theatlantic.com/ideas/archive/2020/02/what-happened-delhi-was-pogrom/607198/

2. Hate Pays: The ease of targeting Minorities in India

July 2019

1. Background
Hate crimes against minorities in India have seen a spike in recent years. According to a recent report by Amnesty International, there have been a total of 902 incidents of documented hate crimes between 2015 to June 2019. A Washington Post report had counted less than 10 cases reported in the English media in the previous years of 2010-2013. This is a worrying trend, with its principal manifestation in the spate of mob lynchings and vigilante violence against Muslims and other weaker sections by Hindu majoritarian groups – including Christians and Dalits. This briefing note will identify and analyse the nature of various hate crimes that are committed against religious and caste minorities in India, focusing especially on the most recent years. It will study the causes and drivers of hate crimes and explore the reasons behind the rapid increase in the number of such crimes recently. The note will also examine the functioning of various state institutions, including the criminal justice system, to investigate the context to the rising incidence of hate. The paper relies heavily on data collected by organisations like Amnesty International, Human Rights Watch, India Spend and Citizens Against Hate itself, among others.

2. Incidence of hate crime

_Hate Crime_ is understood as “any crime that is motivated by hostility on the grounds of race, religion, sexual orientation, disability or transgender identity.” Since 2014, they have taken in India especially the form of _vigilante violence_ by Hindu majoritarian groups against Muslims, Christians and Dalits, as extra-judicial punishments on various pretexts, principally for killing cows and consuming beef, as well as for converting Hindus to other faiths. Cows are revered by upper caste

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Hindus, and remarkably for a secular constitution, India has strict laws against cow slaughter and consumption of beef, and against religious conversion. The spate of vigilante violence in India today are in effect, acts of law enforcement undertaken without legal authority by self-appointed Hindu groups. Some also coordinate with state actors – at least at the local level. Often, they also involve member of these militant groups mobilising public participation in these ‘performances’ against alleged perpetrators, resulting in lynching of Muslims, Christians and Dalits, often with fatal consequences for the victims.

a. Muslims

The majority of recorded hate crime attacks against Muslims are bovine (cow and beef) related. The first incidents of cow related vigilante violence were reported from about 2013 in Haryana and western Uttar Pradesh, in the run up to the 2014 General Elections. According to Amnesty International, there have been 113 incidents of alleged hate crimes motivated by cow vigilantism between 2015-2019. 39 incidents resulted in death of the victim, a majority of them were Muslim. 2016 recorded the highest number of cow-related attacks, with 36 incidents. 2017 was close behind with 34. There were 22 incidents in 2018 and 10 in the first half of 2019. Uttar Pradesh and Haryana returned the highest number of cow-related vigilante attacks, with 17 in each state until June 2019. Gujarat with 12 and Jharkhand (8), were not far behind. All four were ruled by the Bharatiya Janata Party (BJP).

According to Human Rights Watch (HRW) between May 2015 and December 2018, at least 44 people—36 of them Muslim—were killed across 12 Indian states and around 280 people were injured across 20 states by cow vigilantes. HRW remarked, “cow protectors have reportedly assaulted Muslim men and women in trains and railway stations in Madhya Pradesh state, stripped and beaten Dalit men in Gujarat, force-fed cow dung and urine to two men in Haryana, raided a Muslim hotel in Jaipur, and raped two women and killed two men in Haryana for allegedly eating beef at home.”

11 Ibid.
There have been other excuses too, for hate crimes against Muslims and other minorities, such as the lynching to death of the elderly Ghulam Mohammad by Hindu Yuva Vahini (HYV) – an extremist group founded by the incumbent Uttar Pradesh State Chief Minister, Yogi Adityanath - in the state's Bulandshahr district (July 2017). This was for no other reason than being a Muslim neighbour to a Muslim boy who was in a relationship with a Hindu girl from the area. This form of vigilantism directed at so-called ‘Love Jihad’ by Muslims against Hindus, involves violent Hindu groups targeting mixed marriages and relationships involving Muslim men and Hindu girls, and not the other way around.14 In December 2017, a Muslim labourer in Rajasthan’s Rajsamund district was hacked to death and a video of the killing was shared by the murderer on social media to much popular support. In the video, the perpetrator, Shambhulal Regar, is heard muttering even as he sets alight the dead body, “Jihadis. This is what will happen if you spread Love Jihad in our country”15.

And lately, various incidents of violence against Muslims have been reported where victims are beaten and forced to chant ‘Jai Sri Ram’, ‘Vande Mataram’, or ‘Jai Hanuman’, all Hindu religious slogans, on a variety of pretexts: alleged theft of cows, to simply being at the wrong place at the wrong time. Imran Ismail Patel was beaten by a group of ten people and forced to chant “Jai Shri Ram” in Aurangabad, Maharashtra16. Rajab Alam, an eleven-year-old madrasa student was brutally assaulted by a mob in Murshidabad, West Bengal and forced to chant ‘Jai Sri Ram’17. In in Madhya Pradesh, 16 people were chained together and forced to chant ‘Gau mata ki Jai’ for allegedly smuggling cows18. Sometime these assaults have had fatal consequences. Tabrez Ansari was tied to a pole, beaten through the night, and forced to chant ‘Jai Hanuman and Jai Sriram’, accused by perpetrators of stealing. 19 Demonstrating how Hindu majoritarian groups work in coordination with state actors, the police, rather than rush Ansari to hospital, took...

him in custody. Ansari died 3 days later.\textsuperscript{20} A similar case of Police complicity in the death of a victim of vigilantism had taken place in western Rajasthan State’s Alwar district in July 2018.\textsuperscript{21}

Allegations of conversion of Hindus have also invited vigilante action by Hindu groups. These have been directed against those seen to be behind the conversions or those having converted. In April 2018, a Dalit man in Uttar Pradesh who had recently converted from Hinduism to Islam, was reported to have been attacked by Hindutva groups. Video clips of the mob removing his skull cap and shaving his beard were circulated on social media.\textsuperscript{22}

b. Christians

Christians in India too are targets of vigilante violence, mostly on the pretext of conversion. According to Open Doors USA, “Converts to Christianity from Hinduism bear the brunt of the Christian persecution in India and are constantly under pressure by the state, their community and their families to return to Hinduism (especially via campaigns known as \textit{ghar wapsi}, (literally, homecoming)).\textsuperscript{23} On January 20, 2018, the body of Pastor Gideon Periyaswamy in Adaiyalachery (Kanchipuram District, Tamil Nadu) was found hung from the thatched roof of his house, a week after he complained to Police about opposition from violent Hindu groups.\textsuperscript{24} On June 19 2018, five Christian women were abducted in Jharkhand, and then gangraped in a forest, allegedly by members of Hindu groups. The assault was also allegedly filmed on mobile phone.\textsuperscript{25}

Often the police, rather than protecting the victims, have, fuelled by supposed intelligence from vigilante groups, misused anti-conversion laws (in effect in 7 states of the country) booked Christians engaged in their normal religious activities on charges of unlawful conversion. On December 14, 2017, a carol-singing group belonging to St. Ephrem’s Theological College in Satna, Madhya Pradesh was detained by police following a complaint from Hindu vigilantes

\textsuperscript{20} Ibid.
\textsuperscript{21} Akbar Khan, lynched by cow vigilantes, patronised by the local MLA, died for want of urgent medical attention. \url{https://www.bbc.com/news/stories-47321871}
\textsuperscript{24} Ibid.
\textsuperscript{25} Ibid.
accusing the group of being involved in religious conversion. In May 2018, authorities arrested 11 people for conducting a group prayer in a home in Jharkhand, and four others were arrested nearby after locals complained about the group conducting a Christian marriage ceremony.

c. Dalits

Dalits too have been victims of hate crime by violent Hindu groups on the pretext of cow slaughter and beef consumption. In July 2016, in what is now an emblematic case from Una district in Gujarat, seven members of a dalit family were assaulted by cow vigilantes accused of killing cows. Amnesty International reported 17 incidents of hate crime against Dalits between September 2015 and June 2019, all on the pretext of cow and beef. But violence against Dalits has a longer history and a wider repertoire of motivations – not just claims of extra judicial law enforcement. These too have been on the rise in the past years. In the four years between 2015 and 2019, there have been 618 incidents of violence against Dalits, out of which 194 incidents resulted in death and 119 cases were of rape and in 25 incidents, the victims were raped and killed. (Ibid) Many hate crimes committed against Dalits are borne from the notions of purity and pollution which make many shared spaces in a community inaccessible to Dalits. Those that try to break these taboos are particularly vulnerable to vigilante attacks. Recently two Dalit children, who did not have a toilet at home, were allegedly beaten to death by two upper-caste men for defecating in open area in Madhya Pradesh. Prashant Solanki, a Dalit man was ambushed by a mob for riding a horse to his wedding – riding a horse being considered an upper-caste privilege. A 40-year-old Dalit man was beaten to death for allegedly stealing a water pump in Rajasthan. A 23-year-old Dalit man was beaten to death by upper caste persons from the

26 Ibid.
27 Supra note xvi
28 https://scroll.in/latest/949695/una-case-victim-asks-president-to-deport-them-to-country-where-they-will-not-face-discrimination
village for eating in front of them at a wedding reception in Uttarakhand.\textsuperscript{33}

d. Women

Women, especially from marginalised groups, have also been the target of much violence these past years – being victims of sexual violence overlapping that directed at marginalised identities. National Crime Records Bureau’s (NCRB) report of crimes in India in 2017 showed that crime against women was on the rise.\textsuperscript{34} According to Amnesty International’s ‘Halt the Hate’ Report, in the period spanning from September 2015 to June 2019, 274 incidents of alleged hate crimes were committed against women with added vulnerabilities. 210 of these were committed against Dalit women, 16 against Muslim women, 15 against Adivasi, 29 against those with vulnerable SOGI, 1 against a Christian woman and 8 against others. In 69 incidents, the victims were killed and in 124 they were raped or sexually assaulted.\textsuperscript{35}

Overall, Uttar Pradesh state reported (between Sept 2015 and June 2019) the highest number of hate crime incidents, 216, topping also in each of the specific categories (cow vigilantism against Muslims and dalits; religion based, as well as caste based). This is – in steady pattern – twice the number of incidents compared to the other states with high incidence of hate crime, viz. Tamil Nadu (80 incidents, majority caste-based), Gujarat (79), Haryana (61), Rajasthan (59) and Karnataka (48), last four, a mix of religion-based and caste. BJP took power in Uttar Pradesh in March 2017. The months before and after state assembly elections – which saw significant spike in hate speeches by politicians on their campaign trail, including by senior-most BJP leaders – have reported most hate incidents, religion-based against Muslims and Christians, and caste-based against Dalits. The state has had a long record of crimes against women.\textsuperscript{36} Since 2017, these, including against Muslims and Dalits, have surged.\textsuperscript{37}

\begin{itemize}
\item \textsuperscript{33} Press Trust of India (2019). ‘Dalit man succumbs to injuries after being beaten up at a wedding reception in Uttarakhand for eating with upper caste men’ Firstpost, 6 May [online]. Available at: https://www.firstpost.com/india/dalit-man-succumbs-to-injuries-after-being-beaten-up-at-a-wedding-reception-in-uttarakhand-for-eating-with-upper-caste-men-6577521.html
\item \textsuperscript{35} Supra note i
\item \textsuperscript{36} ‘Uttar Pradesh tops in crimes against women, says NCRB report.’ The Hindu, https://www.thehindu.com/news/national/other-states/uttar-pradesh-tops-in-crimes-against-women-says-ncrb-report/article29760974.ece
3. What is driving the surge?

3.1 Hate speech by powerful people

The kind of violence that is perpetrated against religious, caste and gender minorities is often fuelled by the majoritarian language used by people in power. Mohan Bhagwat, chief of the all-powerful Rashtriya Swayamsevak Sangh (RSS), the Hindu religio-cultural organisation of which the ruling Bharatiya Janata Party (BJP) is the political wing \(^{38}\), recently remarked, “isolated incidents of social violence should not be labelled with foreign words, like lynching, to defame the country”\(^{39}\). He had earlier, in 2017, following a spate of killings in the name of the cow, noted, “Saving cow is beyond religion: Gau Rakshak shouldn’t fear anyone”\(^{40}\). PM Modi has himself been criticised for not speaking out enough against lynchings. But a careful reading reveals that Modi was in fact instrumental in creating an atmosphere tolerant of targeted hate. A major theme of BJP’s 2014 elections campaign – led by Narendra Modi – was a supposed ‘pink revolution’ that the Congress party was promoting, supposedly a sinister conspiracy to slaughter more cows and make profits off their meat\(^{41}\). Here is Modi at an election rally in Nawada, Bihar. Congress party was in power in Centre then.

_We’ve heard of the Green Revolution. We’ve heard of the White Revolution. But today’s Delhi sarkar (government) wants neither. They’ve taken up cudgels for a Pink Revolution. Do you know what it is? When you slaughter an animal, then the colour of its meat is pink. This is what they call a Pink Revolution. The Delhi sarkar will not give out subsidies to farmers or to yadavs (the caste group) keeping cows, but will give out subsidies to people who slaughter cows, who slaughter animals, who are destroying our rivers of milk, as long as they set up qatlkhana (slaughterhouses).”_ Bihar (April 2, 2014)

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\(^{38}\) RSS


This dog whistle reference to Muslims helped tie in the Pink Revolution claim nicely with BJP’s pet charge of Congress’ supposed appeasement of minorities.

BJP ministers and legislators have regularly spoken in divisive tones, in support of hate crime perpetrators. Just after Mohammad Akhlaq (70) was pulled out of his house and lynched by a Hindu mob in Uttar Pradesh’s Bisada in 2015, accused of possessing beef, Sakshi Maharaj, BJP MP, threatened “We won’t remain silent if somebody tries to kill our mother. We are ready to kill and be killed.”

Cow is considered scared by caste Hindus. BJP’s western UP regional vice president wanted Akhlaq’s family booked for cow slaughter. Sangeet Som, an accused in Muzaffarnagar violence in 2013, threatened to give “a befitting reply” if innocent (Hindus) were booked for Akhlaq’s murder. And Mahesh Sharma, Modi’s minister of culture attended the funeral ceremony of the prime accused, with the national flag draped over the corpse. Likewise, when Jharkhand High Court granted bail to the accused in lynching of Alimuddin Ansari in the state’s Ramgarh district (2017), Jayant Sinha, a junior minister in Modi’s cabinet, welcomed the accused with flowers and sweets.

But it is not just cows and lynchings that provide grist for divisive posturing by powerful people, helping embolden hate perpetrators. In 2018, a study by NDTV - the news portal - found that the use of hateful and divisive language by high-ranking politicians had increased almost 500% in the previous four years, since 2014. These statements were either communal or casteist. Many of these were calls to violence. 90% of these statements had been made by BJP members. The NDTV investigation also found that politicians faced no consequences for these actions, either by law enforcement authorities or the own parties. Repeat offence was common. And in many instances, hate had paid off, with politicians promoted to senior positions in government or the party.

Another report found candidates with hate-speech cases against them, three times more successful in elections compared to those without a criminal record. A study on hate speech during elections by Association of Democratic Reforms, a civil society election analysis of self-disclosed crime records of candidates who have contested various elections nationwide over the last 12 years.

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42 Supra note xxiii
Hate Pays: The ease of targeting Minorities in India

In 2014 election campaigning, Amit Shah, then BJP General Secretary, now Union Home Minister, was booked for inciting Jats in UP’s Muzaffarnagar district to avenge killings during the 2013 communal violence in the district, by voting BJP. Hate speech by politicians spiked in 2019 General Elections too. Although a number of politicians were reprimanded by the election watchdog, senior-most leaders of the ruling BJP regularly escaped censure, resulting in the Supreme Court criticising the Election Commission for “acting powerless and toothless against hate speeches during election rallies”.

3.2 Hate speech on social media

Increasing access to social media platforms in the country has also given space to people to spread fake propaganda and disinformation. Many a time, misinformation directly causes violence and hate crimes, mostly it fuels the incident. 52-year old Mohammed Akhlaq, was lynched to death by a mob over rumours that he had slaughtered a calf and stored beef in his refrigerator, the proof of which was a couple of photographs of meat circulated on WhatsApp. A BBC analysis of similar lynching cases found that at least 31 people were killed following fake rumours on WhatsApp between 2018-2018. Dozens had been injured. A similar study of hate content on Facebook in India threw up staggering figures: 37% of the hateful posts were Islamophobic (including anti-Rohingya material, posts pertaining to ‘love jihad’, glorification of earlier instances of violence against Muslims, and Islamophobic profanities), 16% fake news, 13%

targeting gender or sexuality, 13% targeting caste minorities, and 9% targeting other religious minorities.\textsuperscript{52} And in Assam, where the National Register of Citizens (NRC) exercise is coming to a conclusion, a recent study of 800 Facebook posts by Avaaz found a preponderance of hate speech against Bengali immigrants, who are openly referred to as “criminals”, “rapists”, “terrorists”, “pigs” and other dehumanising terms.\textsuperscript{53} Lack of action by people in power against hatemongers means laws exist in vacuum.

3.3 Laws that aid in the targeting

As important as the complicity of political leaders is the structural basis for the rise and sustenance of hate crime. Principal here is the state cow protection laws. 24 out of India’s 29 states (provinces) have enacted cow protection laws. These vary greatly, with some states allowing the slaughter of cattle subject to certain restrictions, while others completely prohibit the practice. All these state laws create criminal offences, most of which are of the cognizable and non-bailable kind and include extraordinary provisions such as shifting the burden of proof on the accused. Many also empower the police to arrest suspects without a warrant, or to enter, search and seize vehicles that are suspected of carrying banned items. States with the strictest cow protection laws - like Uttar Pradesh, Haryana, Rajasthan, Jharkhand - have also reported the highest number of mob lynchings.

Cow protection laws have created openings for Hindu extremist groups – such as Bajrang Dal, and VHP - to target cattle traders and pastoralists, especially Muslim, resulting in the lynchings rife in the country today. Fashioning themselves as gau rakshak dals (cow protection forces), they claim to be resorting to vigilantism to help better enforce cow protection laws, arguing that the police itself is not able or willing to do that fully. They have been helped in this vigilante enterprise, in some states anyway, such as Haryana as well as Gujarat and Maharashtra, by being given formal roles to aid the police in enforcement - including powers to stop, search and seize.\textsuperscript{54} A recent report by the Peoples Union for Democratic


\textsuperscript{53} “Megaphone for Hate: Disinformation and Hate Speech on Facebook During Assam’s Citizenship Count.” Avaaz, October 2019. https://avaazpress.s3.amazonaws.com/FINAL-Facebook%20in%20Assam_Megaphone%20for%20hate%20-%20Compressed%20(1).pdf

\textsuperscript{54} In 2011, the state of Gujarat - then ruled by current PM Modi - announced a hundred-fold increase in the annual grant to the Gauseva and Gauchar Vikas Board, a state body set up to “coordinate with groups involved in preventing slaughter of cow and progeny” and to ensure “effective implementation of cow
Hate Pays: The ease of targeting Minorities in India

Rights (PUDR) on the impact of the Haryana cow legislation noted “there has been an increase in the number of gau rakshaks who act as ‘eyes and ears’ of the administration and also as enforcers of law and dispensers of ‘lynch justice’”. Such organisations, working mostly under the protection of senior political workers, repeatedly claim to be running volunteer networks and check points on main access roads, to apprehend ‘cattle smugglers’ all, in coordination with local police. The laws also provide a cloak of impunity to these Hindu extremist groups targeting minorities.

Impunity is provided to Hindu extremist groups through the working of laws enacted by states to regulate religious conversions. These laws, called Freedom of Religions Acts and adopted by 7 states, grew out of the efforts by Hindu groups since just after Independence, to prevent conversions. Whilst there are some variations between the state laws, they are very similar in their content and structure: they all seek to prevent conversion through ‘forcible’ or ‘fraudulent’ means, or by ‘allurement’ or ‘inducement’. Most laws require intent of conversion to be reported to authorities well in advance. Crimes under these acts are cognizable offences, mostly non-bailable.

Notably, as with cow protection laws, evidence is emerging of freedom of religion laws abused by police and Hindu extremist groups to target minorities – especially because the laws do not require any evidence to support accusations of wrongdoing. A recent report on state anti-conversion laws by the Alliance in Defence of Freedoms (ADF) reports “these laws foster hostility against religious minority communities - in several states, prosecutions have been launched under the Freedom of Religion Acts against members of the minority Christian community, and there have been frequent attacks against the community by members of right-wing Hindu groups on the pretext of ‘forcible’ conversions”.

Media accounts also point to the police and local administration either coming...
under the heavy influence of Hindu groups, as they respond to allegations of conversions, or at times working in coordination with these groups to enforce the law. Regardless, evidence is mounting of the police creating spaces for private entities in law enforcement resulting in negative trends similar to that we saw generated under cow protection enforcement. This has resulted in the targeting of minority Christian communities.

3.4 Absence of robust law that protect

There is also the absence of laws that protect against targeted violence/hate crime, hence the absence of safeguard. The Scheduled Castes and Tribes (Prevention of Atrocities) Act 2005, does not cover religious minorities. In any case the conviction rate under SC-ST Act is a mere 5% in the three years from 2014-2016 where figures are available in just Gujarat.59 Section 295 of the Indian Penal Code provides a means to tackle deliberate or malicious acts meant to insult or hurt religious sentiments. The Supreme Court has ruled that the use of this law has to be narrow and has restricted its use.60 There are also specific provisions in Indian law on hate incitement and spreading false and or provocative news: sections 153, 153a, 295a, and 505 of the IPC; and Sections 69A and 79 of the Information Technology Act 2000. These are seldom used against powerful people making hate speeches.

4. Conclusion

As reported by New York Times, "In India, release of hate crime data depends on who the haters are"61. Incidents of violence against persons from minority and disadvantaged communities are not isolated incidents but motivated by hate or prejudice against persons having such an identity. These incidents occur as the state, along with its institutions is not taking strict actions against the perpetrators but continue to shield them and pursue cases against the victim. The social fabric of the country is under threat with the rise in such hate crimes as people from minority communities are under constant fear for their life and liberty.


3. Hate in the Air: Social media fuelling hate crimes against minorities

August 2019

1. Background

The rapid growth of digital technology and social media in India have had a side effect - the emergence of new forms of hate and violence that have had horrific consequences around the world. Despite efforts by social media platforms and governments, the use of online spaces as a medium to spread hate continues almost unabated. This often spills over to the real world, resulting in violence and the undermining of the overall democratic process.

This paper will analyse, with the help of selected illustrative examples from an Indian context, the phenomenon of online hate and its violent real-life spillovers. It will look at how efforts by social media platforms like Facebook, Whatsapp and Twitter have mostly failed to tackle the problem, and how the Indian state and its present functionaries have demonstrated a history of using the internet and social media to not only crush dissent, but also to twist the general social discourse as per their requirements, often resulting in the normalisation of hate against religious minorities and other marginalised communities.

2. The continued proliferation of hate and disinformation online

Whatsapp and Facebook, with over 400 million and 294 million active users respectively, are now widely used in India by the younger and older generations alike. While Twitter has released no India-specific usage metrics, it too has emerged as a popular platform to express opinions and to conduct real-time journalism. The infiltration of each of these platforms by miscreants has resulted in a situation where the average Indian user of social media is subject to a barrage of carefully constructed hateful and untrue content, on a daily basis. This has resulted in the normalisation of various kinds of hate, the deepening of delicate social fissures, and at least partly contributed to a steady and continuous increase of hate crimes in the country. Observers report, political actors, particularly those close to the ruling BJP, carefully and deliberately stoke the flames in a bid to further polarise society and thus consolidate their hold over power (see Box 1).

62 According to market research agency Kantar IMRB, India is expected to have 627 million internet users by the end of 2019. Of these, 493 million will be regular users, and around 40% of the regular users will be from rural areas. For more: https://economictimes.indiatimes.com/tech/internet/internet-users-in-india-to-reach-627-million-in-2019-report/articleshow/68288868.cms?from=A

Box 1: The BJP and its online troll army

Social media is believed to have played a substantial role in the BJP’s 2014 and 2019 election campaigns.

“We saw a trend, we read this trend, where the youth of the country were embracing social media as their first tool when they started using the internet, and we made sure our presence was there,” said Arvind Gupta, who as head of BJP’s IT division led the party’s 2014 social media campaign. Gupta claimed that social media affected 30-40% of the overall seats it won. Apart from using platforms like Facebook, YouTube, Twitter and WhatsApp to push its message and frame the public discourse, the BJP also leveraged social media to “crowdsource” its election manifesto. Since it came to power, however, the BJP has been accused of using its massive online influence network to spread hate and disinformation, and also to target its political opponents. Swati Chaturvedi, in her book I Am a Troll: Inside the Secret Digital Army of the BJP, has detailed how PM Modi and other top BJP leaders contribute to the normalisation of hate by following online troll accounts that send out rape threats and death threats to critics, and also indulge in blatant communal incitement.64

In 2015, Modi hosted and posed for photographs with a group of 150 “social media influencers” at his official prime ministerial residence. Many of them were later revealed to have been directly involved in spreading hate and disinformation.65

A few, selected hate-mongering Twitter accounts followed by PM Modi and other top BJP functionaries66:

- @GovindHindu56, who tweeted extensively using the #मममममममम_मम_ममममममम_मममममममम (Complete Boycott of Muslims) hashtag, is followed by Narendra Modi (Prime Minister), Piyush Goyal (Minister of Railways & Commerce), Baijayant

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Hate in the Air: Social media fuelling hate crimes against minorities

Jay Panda (National Vice-President, BJP), Kapil Mishra (former Aam Aadmi Party MLA who defected to BJP)
- @ExSecular, who tweeted a fake picture of actress Swara Bhaskar asking for Muslims to be hanged in the aftermath of the killing of radical Hindu leader Kamlesh Tiwari, is followed by Modi, Goyal and Mishra.
- @NikhilDadhich, who tweeted “Ek kutiliya kutte ki maut kya mari, saare pille ek sur mein bilbila rahe hain (It took a bitch to die a dog’s death, for all pups to howl in the same tune)” following the murder of activist-journalist Gauri Lankesh, is followed by Modi.
- @AmiteshSinghBJP, a self-described member of the Bharatiya Janata Yuva Morcha (BJP’s youth wing) who tweeted false rumours about communal tensions in Godhra and goaded his followers to “kill at least 3000 Muslims tomorrow”, was followed by Modi before his account was suspended.
- @HDLIndiaOrg (Hindu Defence League), the account that started the false rumours about communal tensions in Godhra, was also followed by Modi.

A recent example of this deliberate online polarisation was in the aftermath of the terror attack in February 2019 in Pulwama in the erstwhile state of Jammu & Kashmir, when 40 Indian paramilitary personnel were killed by a suicide bomber. Immediately following the attack, as the Indian government struggled to put together a coherent response, online miscreants went into overdrive, flooding social media with memes and doctored images and videos. Conspiracy theories were propounded, some of them going as far as alleging that India’s opposition leaders were directly involved in the attack. Pictures and videos of Kashmiris supposedly celebrating the attack were spread widely, and Tathagatha Roy - a former senior BJP leader and the serving Governor of Meghalaya state - used his Twitter account to openly call for a boycott of “everything Kashmiri”.67 This toxic environment resulted in hundreds of Kashmiri students across the country being forced, due to threats, to abandon their education and return to their home state.

with some of them even facing violent attacks.68

Some other recent examples of similar, open attempts at polarisation and incitement include: the publishing of a list of interfaith couples on Facebook, exhorting “Hindu lions” to “hunt” them down,69 an argument over a parking spot in Delhi being mischaracterised as a terror attack on a temple, with over 80,000 tweets including from BJP legislator Kapil Mishra;70 the circulation of celebratory videos from Pakistan following its victory over India in the 2017 Champions Trophy final, claiming the people in the videos were Indian Muslims;71 the video of the murder of a Bangladeshi political leader being passed off as the lynching of a Hindu by Muslims in Bihar, with the message “Share this video so much that it reaches Narendra Modi. If you are a true Hindu, then forward it”;72 and the open call on Twitter in October 2019 for a boycott of all Muslims, a trend that stayed online for almost an entire day before being taken down.73

In Assam, where the National Register of Citizens (NRC) exercise is underway, a recent study of 800 Facebook posts by Avaaz found a preponderance of hate speech against Bengali immigrants, who are openly referred to as “criminals”, “rapists”, “terrorists”, “pigs” and other dehumanising terms. These posts were shared almost 100,000 times, adding up to around 5.4 million views for violent hate speech. Another similar, India-wide study of hate content74 on Facebook conducted by Equality Labs provided a breakdown of hate content on the platform: 37% of the hateful posts were Islamophobic (including anti-Rohingya material, posts pertaining to ‘love jihad’, glorification of earlier instances of violence against Muslims, and Islamophobic profanities), 16% fake news, 13% targeting gender or sexuality, 13% targeting caste minorities (40% of these posts targeted caste-based reservations, while the rest consisted of caste-slurs, anti-Ambedkar messages, posts decrying inter-caste personal relationships, etc).

70 [https://www.huffingtonpost.com/entry/bjp-rw-twitter-trolls-temple-terror-attack_in_5d1b1c65e4b07f6ca5830164](https://www.huffingtonpost.com/entry/bjp-rw-twitter-trolls-temple-terror-attack_in_5d1b1c65e4b07f6ca5830164)
73 [https://www.huffingtonpost.in/entry/twitter-sleeping-through-rabid-anti-muslim-hate-is-frankly-infuriating_in_5daf06b1e4b0422422cbf4e2](https://www.huffingtonpost.in/entry/twitter-sleeping-through-rabid-anti-muslim-hate-is-frankly-infuriating_in_5daf06b1e4b0422422cbf4e2)
74 Facebook defines hate speech as: “…a direct attack on people based on what we call protected characteristics — race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity, and serious disease or disability.” It defines ‘attack’ as “violent or dehumanizing speech, statements of inferiority, or calls for exclusion or segregation.” For more: [https://www.facebook.com/communitystandards/hate_speech](https://www.facebook.com/communitystandards/hate_speech)
and 9% targeting other religious minorities.

It is clear that much of this content is clearly designed to deepen polarisation and run afoul of both India's laws as well as platform-specific rules and regulations. And yet, there has been very little action against such content. The Equality Labs study noted that 93% of the 1000+ posts it reported to Facebook were not removed at all. Of the content that was removed, half were eventually restored. Of the 213 (of 800) posts reported by Avaaz, only 96 (45%) were removed. By allowing the continued proliferation of such content, social media platforms like Facebook are complicit in the marginalisation of some of the world's most vulnerable communities.

3. When online hate spills over into real-world violence

Hate speech is often a precursor to mass violence. A striking example of this has been in Myanmar, when social media platforms like Facebook were used to fuel ethnic violence against the Rohingya people. A systematic online campaign involving at least 700 Myanmarese military personnel, it was revealed later, flooded Facebook with hateful, incendiary and dehumanising posts targeting the Rohingya minority. These posts, which were timed for peak viewership among the Myanmarese public, played a "determining role" in perpetuating the crisis, according to the United Nations.75

Similarly, online hate has contributed to mass violence in India as well. In Muzaffarnagar in 2013, when coordinated attacks against Muslims resulted in over 60 deaths, one of the initial sparks for the violence came in the form of a fake video that circulated across the region via WhatsApp and Facebook. The video, which purported to show two Hindu brothers (who had allegedly murdered a Muslim man earlier) being lynched by a Muslim mob in Kawai village, was actually of an incident that had taken place in Pakistan two years earlier. "We had blocked it on the internet. However, it was passed on from phone to phone through WhatsApp and within a few days, thousands of people had viewed it. This only served to inflame sentiments," said PK Vishwakarma, a senior police officer who investigated the incident. Copies of the video were discovered on the phones of several of the arrested rioters. "They all believed that this was indeed the incident at Kawai," added another officer.76

75 https://time.com/5197039/un-facebook-myanmar-rohingya-violence/
76 https://www.financialexpress.com/archive/muzaffarnagar-rioters-used-whatsapp-to-fan-violence-find-policeman/1168215/
Online hate and disinformation is also alleged to have played a role in 2015 in Dadri, when 52-year old Mohammed Akhlaq was lynched to death by a mob over rumours that he had slaughtered a calf and stored beef in his refrigerator. Rakhi, a 39-year-old woman quoted in a HuffPost India report from the area following the incident, cited “young blood” as the reason for the high level of intolerance in the area. “There were no old people in the mob. They were all young and angry. There is something about the food we eat, the air we breathe today, and all these mobile phones, which makes the young men so frustrated and violent,” she said. The report noted that many villagers firmly believe that Akhlaq’s family did kill a cow, and that he did deserve his fate. Their proof? Three unverified photos of meat and bones that were circulated widely in the region via WhatsApp.77

The circulation of disinformation on WhatsApp has, in fact, resulted in a phenomenon referred to by many as “WhatsApp lynchings”. A BBC analysis of similar lynching cases found that at least 31 people were killed following fake rumours on WhatsApp78. A notable example is from Bangalore, when a viral video clip showed a man on a motorbike appearing to kidnap a child from a public street, warning people to be on the lookout for “potential child-lifters”. In the mob frenzy that followed, vigilantes killed at least 10 people whom they suspected of being child abductors. The video was later revealed to be part of a safety video produced by a child welfare group in Pakistan, with this clarification being edited out of the viral video.79 Similarly in Rainpada, Maharashtra, five travelling nomads were beaten to death by an angry mob that had watched WhatsApp videos warning of outsiders kidnapping local children. “Our clients' position is that they genuinely thought that the five people were child kidnappers because they had been seeing this kind of information on WhatsApp for months,” said one of the lawyers for the accused.80

While the anger resulting in such incidents may be spontaneous, it is clear that the stories that fuel such violence are not. “Clearly, people with money and skills take part in creating the fake videos. In many cases, the footage used is sourced from all over the world. It is edited, manipulated and then spliced together to suggest that it is of recent local origin,” said Vir Sanghvi, a journalist.81

77 https://www.huffingtonpost.in/2015/10/01/how-centuries-of-peace-in_n_8224590.html
78 At least 10 more similar deaths are reported to have occurred since the conclusion of the BBC study.
79 https://www.bbc.co.uk/news/resources/idt-e5043092-17f0-42e9-9848-5274ac896e6d
80 https://www.buzzfeednews.com/article/pranavdixit/whatsapp-destroyed-village-lynchings-rainpada-india
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assertion was confirmed by Shivam Shankar Singh, a data analyst who worked as a political consultant with the BJP in the past. “Those who make them, those who design the graphics know that they are fake. These messages are then sent to 500 WhatsApp groups, the people in those groups think these are real... and they spread them as they want to spread the message, not because they want to spread fake news,” revealed Singh.82

Although almost all political parties now have dedicated social media wings, the BJP’s ‘IT Cell’ is considered to be far more sophisticated and well-funded than the others. A 2018 BBC research confirmed “right-wing groups are much more organised than on the left, pushing nationalistic fake stories further. There was also an overlap of fake news sources on Twitter and support networks of PM Narendra Modi.”83

4. Why is online hate so prevalent?

The prevalence of online hate, particularly on social media platforms, is now a common phenomenon across the world. The problem of its preponderance in developing countries like India has been described by some as a problem of digital literacy or a lack of education. The Equality Labs study had identified the lack of data and awareness among Facebook’s Indian users about the platform, their rights on the platform as users and citizens as crucial reasons for the persistence of the problem. The London School of Economics (LSE), in a study funded by WhatsApp84, however disputes the centrality of digital illiteracy in the perpetuation of online hate. It found that mob lynchings due to fake news happen out of “reasons of prejudice and ideology”, rather than “ignorance or digital literacy”. In fact, it found that more media literacy can “strengthen the power of some groups to spread ideological disinformation.” If a WhatsApp user is “male, urban or rural, young or middle-aged, technologically literate, Hindu, upper or middle class”, the study found, they are more likely to share fake news or hate speech. The sensationalism of mainstream media adds to the problem, noted the study.

82 https://www.outlookindia.com/magazine/story/how-is-the-fake-news-factory-structured/300965
84 In response to widespread criticism over the role of its platform in hate speech and disinformation, WhatsApp funded 20 academic studies to research the phenomenon, around the world. For more: https://www.whatsapp.com/research/awards/announcement/
The view that prejudice, and not digital literacy, is the primary reason is echoed by the Observer Research Foundation’s Sunjay Joshi: “The specific social media platform or messaging board no longer matters, simply because the problem resides not with the platforms, but elsewhere. The problem is in the milieu in which hate speech proliferates and acts of terror are staged.”

5. Social media platforms and online hate

While it is true that online miscreants take advantage of pre-existing social tensions, and cognitive biases are difficult to dislodge, it is imperative that social media companies are held accountable for the poisonous content that is allowed to spread on their platforms. Partly in an effort to avoid this, they have unveiled a number of measures to check the spread of hate and disinformation.

Following the rise in reporting of the “WhatsApp lynchings” phenomenon in India, WhatsApp rolled out a number of changes to its platform, such as limiting the number of people messages can be forwarded to, putting restrictions on group membership, etc. These measures are easily circumvented by miscreants, according to the LSE study. WhatsApp has also invested in some local education and advertising campaigns, and announced partnerships with local civil society organisations to work on digital literacy. However, hate speech and disinformation continues to be widely disseminated via WhatsApp and other social media platforms.

A key reason for the failure of these technology companies’ efforts is a lack of cultural understanding about the problems faced by marginalised groups in India, according to the Equality Labs study. The study found that Facebook’s hate speech guidelines are not translated into many local Indian languages, thus perpetuating the ignorance among its Indian users about their rights and responsibilities as contributors to the platform. The ignorance of global technology companies about local realities in India was further exemplified late last year, when Twitter CEO Jack Dorsey met with Indian civil society organisations and was reported to have been “largely oblivious” to caste-based abuses taking place on the platform.

The continued reliance on artificial intelligence technology - a process Facebook

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CEO Mark Zuckerberg has admitted will take “5 to 10 years” to perfect\textsuperscript{87} - as opposed to increased engagement of human content moderators, has not helped matters. Academic studies have unanimously recommended that enlisting more content reviewers, and developing India-specific community standards, are imperative to fight online hate and disinformation. Facebook, however, almost seemed blind about the problem when responding to queries from Avaaz: “We have invested in dedicated content reviewers, who have local language expertise and an understanding of the India’s long-standing historical and social tensions.”\textsuperscript{88} Facebook has around 15,000 dedicated content reviewers around the world. When compared with around 2.2 billion users posting content day in and day out on the platform, that comes to around one human content moderator for every 146,000 users.

Equality Labs has suggested that the first step in holding social media platforms like Facebook accountable is to order them to conduct basic human rights assessments of their operations, as required by the UN Guiding Principles on Business and Human Rights.\textsuperscript{89} “We cannot even begin to address the harm unless there is an audit of this harm,” said Thenmozhi Soundararajan, one of the authors of the report.\textsuperscript{90}

6. The role of the state

Social media companies have avoided regulation in the past by claiming that they are merely platforms where content is shared, and not creators of content themselves, and by unveiling a number of piecemeal, platform-specific changes. However, efforts have been gathering pace internationally to bring them under the ambit of the law. (see Box 2)

\begin{itemize}
\item \textsuperscript{87} [https://qz.com/1249273/facebook-ceo-mark-zuckerberg-says-ai-will-detect-hate-speech-in-5-10-years/](https://qz.com/1249273/facebook-ceo-mark-zuckerberg-says-ai-will-detect-hate-speech-in-5-10-years/)
\item \textsuperscript{89} Endorsed by the UNHRC in 2011, the UNGPBHR is the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. Multinational corporations are required to conduct human rights due diligence and identify the impact of business operations on vulnerable groups.
\item \textsuperscript{90} [https://www.huffingtonpost.in/entry/facebook-profiting-normalisation-violent-hate-speech_n_5d010442e4b075510390fc7c](https://www.huffingtonpost.in/entry/facebook-profiting-normalisation-violent-hate-speech_n_5d010442e4b075510390fc7c)
\end{itemize}
Box 2: Global efforts to fight online hate and disinformation

- In 2017, Germany passed the Network Enforcement Act (NetzDG), which forced social media companies to set up procedures to review complaints about content and remove illegal content within 24 hours. Failure to comply with these requirements may result in fines of up to €5m (individuals) or €50m (companies).
- Germany’s Network Enforcement Act is said to have inspired at least 13 countries - in addition to the European Union - to adopt or propose similar legislations. These countries include Australia, Belarus, France, India, Malaysia, Kenya, the Philippines, Russia, Singapore, the United Kingdom, Venezuela and Vietnam.
- The European Union is considering a clampdown on extremist content online, with reports claiming that it plans that it plans to introduce fines for social media platforms if they do not delete extremist content within an hour.
- In April 2019, following the Christchurch mosque attacks that were streamed live by the shooter on Facebook, Australia passed the Sharing of Abhorrent Violent Material Act, which introduces criminal penalties for social media companies, jail sentences (of up to 3 years) for their top executives, and fines of up to 10% of their total global turnover.
- In June 2019, the United Nations officially put hate speech “on notice”, unveiling the UN Strategy and Plan of Action on Hate Speech (UNSPAHS). The UNSPAHS looks to target “root causes” like marginalisation, discrimination, poverty, weak state institutions, etc., and also looks to respond to the impact of hate speech on societies.

iii Social media faces EU fine if terror lingers for an hour https://www.bbc.com/news/technology-45247169
v Hate speech ‘on notice’ as UN chief launches new plan to ‘identify, prevent and confront’ growing scourge https://news.un.org/en/story/2019/06/1040731
Similarly, the effort to eliminate online hate and disinformation in India has to be led by the state. Presently, India lacks a specific law to tackle the problem. Section 153A of the Indian Penal Code (IPC) prohibits provocation with the intent to cause riots, and Section 295A prohibits intentional insults to the religious feelings of any class. But these laws have rarely been invoked in legitimate instances of scurrilous online behaviour. Section 66A of the Information Technology (IT) Act, which had outlawed “offensive”, “menacing”, “false” or “misleading” online messages, was repealed by India’s Supreme Court in 2015 on the grounds that it violated the freedom of speech.

Apar Gupta, the Executive Director of the Internet Freedom Foundation, laments the absence of a sustainable institutional framework to fix accountability for the menace of online hate and disinformation. The tendency to fix the blame on social media platforms, he says, is leading to “public officials and police departments escaping accountability, as they continue to place the onus of governance on a private corporation for maintaining an ordered and democratic society.”

The Indian government has ostensibly been trying to take social media companies to task, warning WhatsApp recently that it “cannot evade accountability and responsibility”.91 In March 2019, the Parliamentary Panel on Information Technology asked Facebook to ensure that its platforms (which include WhatsApp and Instagram) were not misused to create divisions or incite violence.92 In October 2019, the Indian government declared in a filing before the Supreme Court (SC) that the process of finalising new laws regulating social media would be completed by mid-January, 2020. Noting that the internet had emerged as a “potent tool to cause unimaginable disruption to the democratic polity”, the government says that the new laws will address “ever growing threats to individual rights and the nation’s integrity, sovereignty and security.”93

Civil society organisations, however, are sceptical of the government’s intentions. They point to the government’s less-than-stellar record in controlling and suppressing free speech online. According to a study by UK-based Comparitech, the Indian government sends the most number of content takedown requests to

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social media platforms, more than Russia and Turkey. Equality Labs noted that Facebook has been made to disable the personal accounts of more than a dozen leading journalists. A Mint study in December 2018 found that at least 50 people were arrested for social media posts in 2017 and 2018, with some of the arrested spending as much as half a year behind bars. More than half were Muslims, and almost all were very poor. The Internet Democracy Project’s Nayantara Ranganathan noted, “In cases where arrests are made, it is mostly people criticising say the Prime Minister, or the ruling party, with notable exceptions. In a lot of these cases, the reasons are really frivolous.”

A recent report by the Committee to Protect Journalists (CPJ) on the use of opaque legal processes by the Indian state to stifle dissent in Kashmir observed that nearly 1 million tweets have been removed since 2017. More Twitter accounts were withheld in India in the second half of 2018 than in the rest of the world combined. “Dissent is being criminalised and space is stifled. This way, Twitter is automatically siding with the oppression and not with the expression. This is a violation of the right to freedom of speech,” said Khurram Parvez, Kashmiri human rights activist. An anonymous government source quoted in an Al Jazeera report detailed how the process takes place: “After identifying the Twitter handles, a request is made through a magistrate for their blocking. After getting a proper court order same is sent to Computer Emergency Response Team (CERT), an expert agency that handles computer security incidents”. CERT, in liaison with social media platforms, checks the “merit of the accounts that are requested to be blocked”. “It’s mostly accounts with anti-national content and sometimes blasphemous handles also,” the anonymous source added.

7. Conclusion

Historically, hate speech and disinformation have been precursors to mass violence. In India, as in many places around the world where ethnic or religious majorities are rallying together on the basis of identity, social media has acted as a platform for opportunistic extremists to take advantage of pre-existing social tensions in order to widen and consolidate their support base, propound polarising narratives, and thus mobilise the wider public around their narrow

95 https://www.livemint.com/Politics/sWTiTg8jscRZpKwSPN25UN/Prisoners-of-memes-social-media-victims.html
political agenda. As Disney CEO Bob Iger remarked recently, “Hitler would have loved social media. It’s the most powerful marketing tool an extremist could ever hope for because by design social media reflects a narrow world view filtering out anything that challenges our beliefs while constantly validating our convictions and amplifying our deepest fears.”

Social media companies must be held responsible for allowing their platforms to be misused, but the onus on taking the lead to tackle the wider problem of societal degradation as a result of online hate and disinformation must fall on the state. The Indian state has, over the years, proved itself to be adept at leveraging the internet and social media to promote its interests. The Indian government, particularly since the BJP assumed power, has also proved itself adept at working in consonance with social media companies to muzzle voices that it finds unsavory. The continued festering of hate and disinformation in online spaces, and its spillover into the real world as mob violence, therefore, can at least partly be understood as a problem of failure of intent on the part of the functionaries of the Indian state. As Hannah Arendt noted in her study of the Nazi war criminal Adolf Eichmann, some of the most monstrous crimes are committed not by perverted and sadistic monsters but by “terribly and terrifyingly normal” people who merely do what they see as expected of them by those in power.

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Ram Navami violence in Bihar

4. Organised ‘communal violence’:

Report of fact-finding investigation into Ram Navami violence in Bihar

April 2018

1. Background

Ram Navami - the celebration of the birth of Lord Ram, the Hindu god, incarnation of Vishnu, who descended the Earth to show all the path of truth and righteousness, and to ensure the triumph of good over evil - is a festival of celebration. This year, it left in its trail, large scale violence and destruction, stretching through broad swathes of the country. Starting with Raniganj and Asansol in West Bengal (25-03-18), mobilisation around local Ram Navami celebration processions resulted in deaths and injuries and largescale arson of shops and homes in several districts of Bihar – Aurangabad, Samastipur, Nalanda and Nawada. Similar violence, around Ram Navami processions and “Veer Hanuman Vijaya yatra” also occurred in Nirmal district in Telengana, and Vadodra in Gujarat. Earlier, Kasganj in Uttar Pradesh had been wrecked by violence around Republic Day\(^\text{100}\) (26-01-18); and Bhagalpur in Bihar around Vikram Samvat\(^\text{101}\) celebrations (17-03-18).

Common to all these violence episodes was the use of large processions, by youth belonging to Hindu right-wing groups – the Bhartiya Janata Party (BJP), Vishwa Hindu Parishad (VHP) and particularly Bajrang Dal, the youth wing of VHP – armed with swords, stick and machetes, and guns and country made bombs in some cases; raising slogans and playing songs loudly, derogatory to Muslims, in an attempt to provoke Muslim residents; and the targeting Muslim shops, residences, and places of worship. At most places, public celebrations of religious festivals and national days, in the form of armed aggressive processions targeting the minority Muslim population, was a completely new phenomenon.

The loss of life and property in this round of targeted violence was low (with 5 persons reported killed between Bihar and West Bengal), compared to past cases of what are called ‘communal violence’ in India, with their tens of hundreds

\(^{100}\) Celebrated to mark the day when India adopted the constitution, 26\(^{th}\) January, 1950

\(^{101}\) Hindu New Year, added recently to festivals celebrated with a show of strength, through processions
killed and largescale destruction of property mostly Muslim. Loss to social harmony; the loss of trust by Muslims in the state administration’s ability to protect their life and property; and particularly the feeling of insecurity among Muslims, has increased manifold, coming as this string of violence was, so close to recent attacks on Muslims, again across the country, in public Lynchings and vigilantism. When last counted, 30 Muslims had been killed in provinces up and down the country, in acts by youth groups, calling themselves Gau Rakshak Dals, professing allegiance to the same Hindu rights wing parties. Muslims in India today are a community under siege!

This report summarises the findings of investigation into communal violence in Bihar, also looking at neighbouring West Bengal, around recent Rama Navami festival (2018), conducted by Citizens Against Hate and other like-minded civil society groups, as well as media reports. We ourselves visited Aurangabad, Nalanda, Nawada, Rosera in Samastipur – the sites of the major conflagrations in Bihar. At these sites we spoke to a cross-section of people, as well as opinion makers and government officials, besides victim families. We also made ample use of media reports and reports of fact findings by groups, although these were not plentiful. We also examined legal documents – First Information Reports (FIR) mostly, but also list of property loss submitted to authorities. First we provide a snapshot of the incidents by state. Then we catalogue the patterns emerging. First is about the planning and coordination involved in the violence; second is the use of religious processions as vehicles to provoke and trigger violence. We then look at the role of Hindu right wing organisations fomenting the trouble in these violent episodes, and finally try to shine a light on the role of Local Administration, trying to understand what their preparation was and whether they did enough, not only to contain the violence but also what efforts the ‘duty bearers’ were making post-violence to provide justice and ensure the rule of law. We conclude with a set of recommendations.

102 Among the ones with highest casualties are: Rourkela, Jamshedpur, Kolkata (1964, 2500 killed); Ahmedabad (1969, 512 killed); Moradabad (1980, 2000 killed); Nellie (1983, 1800 killed); Delhi (1984, 2733 killed); Bhagalpur (1989-90, 896 killed); Surat, Bhopal, Mumbai (1992, 1300 killed); Gujarat (2002, 2000 killed); Kandamahal (2008, 38); Muzaffarnagar (2013, 52 killed)

On March 17, 2018, clashes erupted in Bhagalpur between two communities during an unauthorised procession taken out by BJP, Bajrang Dal and RSS activists. The procession was led by Arijit Shashwat, son of Union minister Ashwani Choubey. Over 35 people including policemen were injured and several shops and vehicles were set afire.

On March 24, a clash broke out in Siwan between two communities following an alleged effort by some people to stop a Ram Navami procession at Hassanpura. Both sides indulged in stone-pelting, three vehicles were burnt. Six people were arrested.

On March 25, clashes erupted in Aurangabad following a stone-pelting incident during a Ram Navmi procession. Clashes continued for two days, leaving over 25 people injured and 50 shops gutted. Curfew was clamped in the town and internet services were withdrawn. Police arrested 122 people.

On March 27, in Samastipur, members of two communities clashed and a mosque was vandalised in Rosera. Some people forcibly hoisted a saffron flag on top of a minaret of the mosque. These incidents took place a day after a slipper was allegedly thrown at a Ram Navami procession. Ten people, including a probationary IPS officer, were injured and three vehicles were set afire. Curfew was imposed. Three people were arrested.

On March 27, in Munger, clashes broke out between two communities after some people protested against a controversial song being played and inflammatory slogans being chanted during an immersion procession of Chaiti Durga. Stones were pelted and shots were fired by both sides at a thoroughfare. Violence spread to several parts of the town. Property and vehicles were set afire.

On March 28, in Silao (Nalanda), there was heavy stone-pelting after a dispute over the route of a Ram Navami procession, and police had to resort to mild use of force besides firing tear gas shells to quell the mobs. More than 20 people, including a policeman, were injured. Fourteen people were arrested.

On March 28, in Sheikhpura, participants of a Ram Navami procession clashed with police after their demand to use a route other than the permitted one in Girhinda area of the district was disallowed. Police resorted to baton charge.
An FIR was lodged. There were also communal clashes earlier on March 17th, in Bhagalpur district after Arijit Shashwat son of Union Minister Ashwini Kumar Choubey took out an armed rally shouting provocative slogans through multiple Muslim neighbourhoods.

**Sources:**

- Newsclick - 31 March 2018 - [https://newsclick.in/swords-cds-and-pen-drives-how-riots-9-bihar-districts-were-planned-and-executed](https://newsclick.in/swords-cds-and-pen-drives-how-riots-9-bihar-districts-were-planned-and-executed)

**BOX 1: Violence Timeline**

### 2. Violence trends and patterns

Media reports during the violence; those and the detailed fact-finding investigations by civil society groups after104, covering all recent cases, and an examination of FIRs registered by the police, reveal a clear pattern.

#### 2.1 Planning and coordination

These are not spontaneous acts of violence by mobs, rather there is evidence of systematic planning behind the series of violence. There seems to have been a clear attempt by Hindutva outfits to use Ram Navami processions to create communal tensions in at least three states in India: West Bengal, Bihar and Telangana. Communal polarisation during Ram Navami, the emphasis on armed processions and the use of common provocative songs and speeches are common threads that run through the violence in the three states.105

Speaking of Bihar, where nine out of 38 districts were affected, the violence appears to have been pre-planned with the aim to polarise society on communal lines, hence ‘manufactured” to achieve “political gains”. Newsclick reported that

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104 United Against Hate, and PUCL reports, on violence in Bihar
105 CatchNews, 29-03-18
people from neighbouring states (eastern Uttar Pradesh, particularly) had been called in to take part in processions and who were instrumental in the violence. “New and common faces have been spotted in different districts, leading the processions and instigating people to indulge in violence,” the report noted, quoting two high-ranking officials of the state police.106

Another report, by News18 (04-18), reported that three persons had been identified in mobs in 3 separate districts – Aurangabad, Samastipur and Munger. Two vehicles were also identified used in all three districts. The report also claimed that Dhiraj Kumar, Bajrang Dal convenor from Silao in Nalanda, as being involved both in Nalanda and Nawada violence episodes. The FIR registered by Silao police station in Nalanda mentions Bajrang Dal members using walkie talkie sets to mobilise their ranks and coordinate attacks on the police. (Case no 50/18, dated 29/3/18).

All reports referred to distribution of material - CDs and pen drives containing abusive and objectionable songs; and weapons, including swords - well in advance of the violence in all affected districts. United Against Hate (UAH) team investigating the violence, claimed to have found that a businessman in Patna alone had bought 50,000 swords, for distribution. Speaking to the coordinated nature of the operation was this finding of the UAH investigative team: “There are reports that around 2 lakh swords were procured from outside the state. Orders were placed on an online shopping portal, which connected the buyers with supplier who de- livered the consignment through a courier service in different districts of the state”107. Bihar Home Secretary, in an interview to United Against Hate, confirmed that the administration was “aware of swords being present at the processions in large numbers. Don’t know exactly how many. It is hard to track sales online. Swords never been seen before at the processions”.108

Another report quoted a senior journalist claiming no one came this time round, asking for donations normally needed to organise Ram Navami processions, as in the past, raising doubts about “who funded the event and from where it came?”109 And in Asansol, police are reported to have started investigation into the role of anti-social elements from Bihar and Jharkhand behind the violence.110 Clearly this was an orchestrated act, with planning, marshalling resources, funding and

106 Newsclick, 31-03-18
107 United Against Hate (2018:3)
108 Ibid
109 Newsclick, 31-03-18.
110 The Telegraph, 04-02-18.
inter-state movement of actors, all to foment trouble.

3. Religious processions: Armed and offensive

This year Ram Navami festival was used by various Hindutva outfits to create communal polarization. Armed processions, in the garb of religious celebration, often named as local puja or celebration committee, insisted on taking out noisy marches, shouting anti-Muslim slogans, terrorizing residents, clashing with police and often ending up with a clash.111 This was the pattern in West Bengal, in the two cities of Raniganj and Asansol, which experienced large-scale conflagrations. In Bihar, these has similar outcomes in Bhagalpur and Aurangabad, Rosera, Nalanda and Nawada, with tension in several other districts. In several parts of UP, Rajasthan and Maharashtra too, similar reports emerged, though these did not break down into violence.112

The pattern of the processions was similar in all the states: large processions, in many cases armed, were carried out and made to pass through Muslim-dominated areas. Local Administration’s directives were violated, either in the carrying of arms or in the route passing through Muslim areas. Provocative, anti-Muslim songs were played. In all the three states, violence began with stone pelting, either by people in the procession or those residing in the areas it was passing through.113

What ensued was characteristic:

_**Hindutva thugs run amok. Mobs parade through Muslim-majority neighbourhoods, attack Muslim-owned businesses and property, attempt to set mosques alight, and plant saffron flags atop them. One of the videos seems to show uniformed policemen joining mobs and chanting along.**_  
(_Business Standard, 30-03-18_

West Bengal has seen Ram Navami processions growing in number and significance in recent years. As with Bihar, these rallies are marked by sword and trident-wielding demonstrators, including young children. According to Scroll.in, in 2017, over 200 processions coursed through Bengal to “unite the Hindus” against “growing jihadi activities in the state”. Largely organised and attended by members of the BJP- ruling in the centre and the main contender in the state - they resemble the area domination exercises of a party keen to establish itself.114

111 Newsclick, 27-03-18
112 Newsclick, Ibid
113 Catchnews, 29-03-18
114 Scroll.in, 28-03-18
A peculiar although not entirely new phenomenon was the playing of provocative songs by ‘DJs’, as they are called in local parlance, with sound boxes atop mini-trucks and vans, at the head of the procession, targeting Muslims. Once such, reported by witnesses as played at processions in various sites across the states, has the following lyrics:

“Jis din jagega Hindutva to yeh anjaam bolega, ki topi wala bhi sar jhuka ke Jai Shri Ram bolega;
Jis din khulaa khoon mera dikhladenge aukat teri, phir to hum nahi bolenge bas bolegi talwar meri;
Ki Har Har Mahadev ka nara Hindu- stan bolega, ki topi wala bhi sar jhuka ke Jai Shri Ram bolega”

[The day Hindutva awakens, such shall be the end, cap wearers too will say Jai Shri Ram as their heads bend: The day my blood boils I will show you where you stand, it will not be my voice talking to you but the sword in my hand: The day India will chant har har Mahadev to no end, cap wearers too will say Jai Shri Ram to no end.]

This song was reported to have been played in Ram Navami processions in Asansol, and at many sites in Bihar.

Another taunted Muslims as ‘aasteen ke saanp’:

‘Pakistan mein bhejo ya qatleam kar dalo, aasteen ke saanpon ko na dugdh pilakar palo’ anised nal

[Send them off to Pakistan or ensure you kill them all, don’t feed milk to these snakes hiding in your sleeves]

Yet another, threatened Muslims to vacate the Babri Masjid

‘Dur hato Allah walon, kyun janmab- hoomi ko ghera hai, masjid kahin aur banao tum, yeh Ram Lalla ka dera hai’

[Move away you Allah worshippers, why have you surrounded the birthplace? Build your mosque elsewhere, this land belongs to baby Ram]

Other provocative slogans at all sites, all directly aimed at Muslim residents, included:

‘Pakistan murdabad’
‘Miyan log Pakistan bhago’
‘Bharat mein miyan ko nahin rehne denge’¹¹⁵
“Hindustan mein rehna hai toh Jai Sri Ram bolna padega”,
“Musalman ka jagah, ya Pakistan ya kabristan”,
“Hum ailan karte hain danke ki chot par, mandir banega har mod par”.¹¹⁶

[If you want to live in India, you must chant Jai Shri Ram; The only place for Muslims, Pakistan or the graveyard; and We declare, we will build a temple at every corner].

Bihar Home secretary, responding to questions on why, despite advance intelligence inputs on possible troubles, the Administration did not take preventive action, noted:

“A day before Rama Navami, peace committee meetings were held and cooperation of both communities was sought. Revised and updated guidelines were sent to district headquarters ahead of the celebrations. All material for the processions such as CDs containing songs meant to be played through loud speakers were checked to make sure there were no offensive songs or tableaux involved. Strict guidelines were given regarding routes etc. Unfortunately, all these terms and conditions were violated. Objectionable and loud musics were (sic) played. (United Against Hate)

Underlining the role of BJP leaders, in Aurangabad, where the procession turned violent, he added:

Political leader of a particular party - who was present at the (administration organised) committee meeting and gave assurances that everything would be peaceful - was seen instigating the crowd. (United Against Hate, 2018: 4)

4. BJP and ‘Sangh Pariwar’ leading the assault

This connects to another common aspect of the violence in all three states: that leaders of the BJP have been reported to have played a role in spreading communal tensions. Babul Supriyo - the sitting BJP Member of Parliament from Asansol in West Bengal – is reported to have made incendiary speech when he was prevented by the police from visiting Asansol, where violence had erupted and administration had invoked preventive orders (u/s 144). He was also reported to have assaulted police officers on duty, whereby the police filed two FIRs against

¹¹⁵ Source: FIR, Silao PS, FIR no 50/18, dated 29/3/18
¹¹⁶ Source: eyewitnesses in Raniganj and Asansol, (Scroll.in, 28-03-18)
Supriyo. Supriyo was scheduled to be part of the central akhara (Ram Navami youth group) which, along with different akhara committees, had organised the procession in the first place.

In Bihar, it was Arijit Shashwat of the BJP, son of union cabinet minister, Ashwini Kumar Choubey, and himself an unsuccessful BJP candidate for the state assembly seat from Bhagalpur, who led a violent procession through Bhagalpur, through multiple Muslim localities, on 17th March 2018, on the occasion of the Hindu new year. The police filed criminal cases against Shashwat; warrants were issued by courts for his arrest, but it was only after much drama that Shashwat surrendered to the police in state capital Patna on 31st March 2018. This was after his father, the central Minister, had spoken to the media, standing by his son. 

Finally, in Telengana, BJP MLA from Goshamahal in Hyderabad, T Raja Singh was booked by Police for provocative speech. A video went viral in which Singh can be seen threatening to “rewrite the history of Telangana” if the Administration disallowed loud- speakers on Ram Navami. Two cases were filed against Singh, for making provocative speeches, including under sect 295(A) of IPC for “deliberate and malicious acts, intended to outrage religious feelings… by insulting its religion or religious beliefs”.

These were only the more famous BJP names to have been highlighted in the violence. There were others too.

- Aurangabad, Bihar: BJP MP from Aurangabad, Sushil Kumar Singh and BJP’s former state minister, Ramadhar Singh, both led Ram Navami processions on 26th March 2018 that later targeted mosques in its route and led to large scale arson and destruction of property, selectively of Muslims. Another BJP member, Anil Singh, leader of Hindu Seva Samiti, and the prime accused in Aurangabad violence, was booked along with 148 others for inciting and leading violence. Singh escaped from police custody, on 31st March 2018, and it was only later that he surrendered.

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117 The Wire, 30-03-18, Catchnews
118 Indian Express, 29-03-18
119 Catchnews, 29-03-18
120 Catchnews, 29-03-18
121 Indian Express, 31-03-18
122 Ramdhar Singh, who was the state Cooperative Minister, had to resign in 2011, when he was declared an absconder by courts in Aurangabad, on hate speech cases lodged against him in 1992. (Economic Times, 19-05-2011)
123 Indian Express, 28-09-18
• Rosera (Samastipur), Bihar: BJP leaders, Dinesh Jha and Mohan Patwa, along with 10 others, were arrested on the basis of CCTV footage in Rosera town, booked for inciting the violence.

• In West Bengal, in Purulia district, armed processions of BJP, VHP and Bajrang Dal cadres were seen shouting slogans and trying to create trouble, though most of these processions did not have any permission from the Administration. The incidents which followed, led to stone pelting and a scuffle between Bajrang Dal cadres and Police, claiming the life of a person. Violence in Bihar

• Bengal state BJP chief Dilip Ghosh was named in FIRs registered by police for carrying weapons in religious processions both in 2017 and 2018. Apart from the BJP, members of sister Hindu right-wing groups – euphemistically called the Sangh Pariwar – were involved at every site.

• Police FIR in Silao (Nalanda, Bihar) mentions Dhiraj Kumar, local Bajrang Dal convenor, as well as Shubham Singh Rajput, Bajrang Dal convenor from Biharsharif, as named accused in the case, of the 69 total identified. (FIR 50/18, dated 28/3/18, Silao PS).

• Police FIR in Rosera (Samastipur, Bihar) mentions Bajrang Dal members, along with other local leaders, all unnamed, as raising provocative speeches, inciting crowds to violence against Muslims, and generally leading the rioting. (FIR no 99/18 dated 27/3/18, Rosera PS).

• FIRs in Aurangabad (99/18 and 101/18, dated 30-03-18) records some of the accused belonging to Bajrang Dal as well as (Gandhinagar Ward 33) Vanar Sena Samiti.

• Bengal’s child rights commission had summoned two Bajrang Dal members over the participation of children in these armed marches. Fact Finding Investigation

124 Scroll.in, 28-03-18
125 Scroll.in, 28-03-18
126 Scroll.in, 28-03-18
5. Role of the State Administration

State administration, including Home and Police departments, as well as District Administration, play a crucial role in preventing communal violence, or if the violence has sparked off, in containing it, preventing loss of life and property, restoring social harmony, and especially, in ensuring that the perpetrators of violence are prosecuted and victims able to access justice, also provided relief and rehabilitation. It is the state – as the duty bearer - that must ensure life and security of all without discrimination, and the enforcement of the rule of law. Our review of media reports, fact finding investigations and analysis of FIRs and other documents reveals that across the sites, role of the state left much to be desired, although there is a much variety on this count, across violence sites.

In Bihar, the inability of the Police in Bhagalpur to ensure a peaceful passage of the ‘Vikram Samvat’ procession on 17th March 2018, led by BJP member Arijit Shashwat, and rein in violent processionists, and later state administration’s inability to arrest Shashwat, the prime accused, showed the first signs of weakness of the state administration in the face of Hindutva assault on communal peace. Despite warrants of arrest having been issued by courts, police were unable to apprehend Shashwat, who eventually surrendered, over a week later, after much posturing by BJP leaders, including his father, Ashwini Choubey, a minister in Prime Minister Modi’s cabinet. This weak show of law enforcement set the tone for much of the blatant disregard for law that Hindutva mobs demonstrated during Rama Navami processions, two weeks later.

Despite the signs of what was to come – also in terms of intelligence that senior state government officials admitted to having of a very organised attempt by Hindutva groups to foment trouble – Local Administrations at various sites that experienced violence were not prepared as well as they should have been. Aurangabad’s case is particularly instructive. Clashes first erupted in the town on 25th March 2018, when a large sword-wielding ‘bike rally’ shouting offensive anti-Muslims slogans forced its way through Muslim dominated areas of Nawadih area of the town. According to residents of Nawadih, the fact finding team spoke with, Police presence was minimal, making a clash between the offensive bikers and residents, inevitable. According to testimonies by residents of the talab area of Nawadih, backed by YouTube videos, Hindu youth also desecrated that day, the Muslim cemetery in the area, and police merely looked on. The bike rally,

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127 https://www.youtube.com/watch?v=f_MgYs0tv0g
128 https://www.youtube.com/watch?v=f_MgYs0tv0g
which was meant to be a build-up for the main rally the next day, was organised by Shri Ram Navami Puja Samiti, that according to reports, has members from parties across the political spectrum — the BJP and ABVP, Congress, the Janata Dal (United) and the Rashtriya Janta Dal — as well as local organisations such as Hindu Sewa Samiti. 

Despite these clashes the previous day, the district administration allowed the Shri Ram Navami Puja Samiti to take out its Ram Navami procession on 26th March 2018 to march through Aurangabad’s main roads. BJP MP, Sushil K Singh, threatened retribution if anyone tried to prevent the rally from taking place. Video footage available on the net show thousands of youth armed with swords and similar weapons, shouting offensive slogans and playing derogatory songs, with senior BJP and other political party leaders participating. Available video footage shows only small police presence, and feeble attempts to keep the aggression of the processionists in check. By the end of the day, the rallyists had destroyed in largescale arson, scores of shops and business establishments, selectively of Muslims.

Elsewhere in Bihar, where Police and Local Administration did try to contain the violence, such as in Nalanda, Nawada and Rosera, Police became the object of much of the ire of Hindutva mobs. FIRs reveal that at those places, police personnel suffered serious injuries.

But it is really in, how the state authorities are dealing with the aftermath of the violence, in terms of investigating crimes committed, with an eye to prosecution – something still playing out, given how fresh the violence is – that we are hearing of police slacking off again, and falling into the old trap of discriminating against the weak, while protecting or at least going soft on the powerful. This story starts with the registration of FIRs, that provides the basis for much of the working of the criminal justice system. FIRs relating to Rosera, mentions rioters being led by Bajrang Dal members and local leaders, but does not name them. No mention is also made of the extent of the provocation that the procession on 26-03-18 made. And notable is the case of Nawada, where the FIR, in describing the violence by Hindu groups on 30-03-18, nowhere mentions Muslims as contributing to it, and yet names 20 Muslim youth as accused along with another 200 unnamed Muslims. Exactly 20 Hindus too are named in the FIR as are 200 unnamed Hindus. Quite similar to this gratuitous ‘balancing act’ that authorities seem to have played

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129 Indian Express, 31-03-18

130 https://www.youtube.com/watch?v=8OgN64FPhhg
is the registering of FIRs in Aurangabad, all based on complaints by the police. There are multiple FIRs registered of the violence in Aurangabad. We have been able to access 4. According to FIR # 93/2018, 28 Muslim youth have been named as accused (along with 150-200 unnamed), for pelting stones at the Ram Navmi procession on 25-03-18. There is little mention in the compliant or the FIR of the aggressive posturing by the processionists that resulted in the pelting.

In Aurangabad, FIR # 95/2018 (of 26-03-18) and FIR # 99/2018 and 101/2018 (both of 30-03-18), similarly are quiet about the provocative slogans and show of arms in the Ram Navami procession on 26-03-18, resulting in the large-scale arson and destruction later in the day. Only 8 properties are named as having been destroyed. Scale of the destruction was greater. Leaders, including BJP leaders, or organisers of the procession are not named in the FIRs, although a total of 121 Hindu youth do find mention. Only the last FIR makes a mention of 3 Bajrang Dal members. 13 Muslim youth too are named accused, including 5 ward councillors. Given the clear attempt by organisers throughout the episode to offend and provoke Muslims, booking community leaders including ward councillors both in the violence on 25th and 26th March, seems like local authority’s attempt to silence the witnesses to the violence, and forestall attempts by the victims to demand action against the perpetrators.

In West Bengal, we are hampered in our analysis by the lack of legal documents – FIRs for eg. – and therefore, have had to rely on media reports, and the occasional victim accounts. According to these reports, in Asansol, there were several problems with the local authority’s response to the mobilisation and the violence.\textsuperscript{131}

- Lack of planning. Although there were signs of build-up by Hindutva groups planning disturbances in the guise of Ram Navami processions, police failed to fathom the extent of mobilisation, and to plan for diffusing it adequately
- It was also late in responding to cries of help, once violence had been sparked – many hours later
- The deployment of force too was inadequate, given the size of the processions and the manner of organisation of the attackers
- The Asansol municipal corporation issued large number of permits for Rama Navami processions, (146, according to one account), but rather than

\textsuperscript{131} Scroll.in, 08-04-18
pressing for the condition of not allowing weapons or loudspeakers to be used, Police and Local Administration was content with taking only oral consent from the organisers. Neither were these conditions mentioned in the permits issued for processions, nor were these conditions taken as written acceptance by organisers. The naivety of the Administration was revealed quickly.

6. Conclusion

Communal polarisation in Bihar has increased since the BJP-JD(U) alliance assumed power in July 2017. Since January 2018, communal tensions have affected several districts of Bihar including Gaya, Arrah, Champaran, Muzaffarpur and Vaishali during festivals like Durga Puja, Saraswati Puja, Mahabiri Jhanda etc. In 2017, there were 85 incidents of communal violence in Bihar that left three persons dead and 321 injured, while in West Bengal, there were 58 incidents that left nine persons dead and 230 injured. Similar attacks against minorities, particularly Muslims have intensified everywhere in recent times. These include targeted violence of the kind we just examined as well as provocations and harassments, such as those recently in Gurgaon (against prayers in the open) and against Aligarh Muslim University, as well as the many untold and unreported cases of everyday harassments and attacks that Muslims face.

Political observers see this trend accelerating in the near future, arguing that this is because BJP has incentivised aggressive/ provocative behaviour, aimed at Muslims, with an eye to polarising society for electoral gains. It appears that it pays for aspiring BJP leaders to try to better their contenders, in provocative behaviour, for electoral ends - a ticket here, a place on the high table there. If this conclusion is true, what this means is that targeted violence against Muslims has now become, in a perverse sense, 'democratised', in a way even cow related lynchings could not be, with every aspiring leader rushing in to manufacture a conflict situation, hoping to cash in electorally. With RSS and Sangh Parivar groups having spawned multiple organisations of the youth - themselves jobless and hopeless - taking chances against Muslims at every opportunity, there will be no shortage of the opportunity for violence.

132 The fact finding team heard stories of the power struggle between the sitting BJP MP from Aurangabad, Sushil K Singh, a floor crosser from Janata Dal (U) and Ramdhar Singh, four-time BJP MLA and a past minister in the state cabinet, in the context of the 2019 Parliamentary elections, and speculations of the Ram Navami violence also playing an instrumental role in the tug of war between the two.
What does this mean for access to justice for victims? While Justice system has always been subverted for the weak and poor, what we are seeing in these recent cases, is a systematic capture of the institutions of the justice system by hate-filled ideologies, so that it is communal considerations that determine actions of Police and Prosecution and Judiciary at the local level; and critically, an encouragement, indeed license for this subversion of the rule of law, by a political class that benefits from polarisation and conflicts. We saw this in Khatua and Unnao, and we are seeing this in the lynching/vigilante violence and fake encounter cases in Haryana and UP. In our current fact finding of targeted violence in Bihar, time and again we came across a Local Administration, helpless in the face of aggressive posturing by senior BJP leaders and those affiliated to Sangh Parivar, to prevent violence. Post violence, FIRs and investigations are showing how political interference of an ideological kind, is resulting in a large number of the innocents, in Aurangabad or Rosera for eg., booked and incarcerated, while known hate mongers and perpetrators remain free, or only have weak charges made against them. This is increasingly becoming a generalised, not one-off, failure. Fact that violence episodes are also taking place with greater frequency and across states, makes this a real threat to the criminal justice system and the rule of law, and especially to hope for justice for vulnerable minorities.

Regarding the media coverage of the violence, it must be noted that the media has chosen to focus on the reaction of the minority community to the processions rather than the aggression of these processions, and the provocative songs and slogans there. An example is this passage from the media on Aurangabad violence.

‘Clashes erupted in Aurangabad following a stone-pelting incident during a Ram Navami procession. Clashes continued for two days, leaving over 25 people injured and 50 shops gutted. Curfew was clamped in the town and internet services were withdrawn.’ (News18, 30-03-2018)

What we are getting is a very partial account of the incident, that does mention the stone pelting, but does not mention, either in the headline or indeed in the main body of the piece, the context in which this took place. This latter is about the nature of the processions, that these are in essence, area-domination exercises by Hindutva groups, patronised by elected representatives, where those in the rallies are armed, shouting blatantly anti-Muslims slogans, and are also playing provocative anti-Muslims songs. This failure of the media is also reflected in the writing of the compliant by the Police on duty, that later gets documented into the FIR that is recorded.
7. Recommendations

The spread of violence in Bihar and West Bengal since the Bhagalpur incident is worrisome. Citizens Against Hate (CAH), a collective of concerned citizens, believes these acts of violence are targeting minorities and creating an environment of terror. Such communal polarisation goes against the ethos of the nation and swift action should be taken by authorities to stop further spread of violence and hold the guilty to account. Below are our demands

1. Judicial enquiries, separately in Bihar and Bengal, to:
   - Identify the culprits behind the instigations and the conduct of the string of violence in the states
   - Understand the organisational support they enjoy, their funding and outreach, and their modus operandi to foment targeted violence, including use of media, and social media.
   - Understand the failures of state authorities in the face of majoritarian aggression targeted at minorities, to plan adequately for preventing violence, respond to calls for help, and contain the violence when it occurs; as well as in the aftermath of the violence, to robustly investigate and prosecute the guilty and provide reassurance to targeted communities
   - Fix accountability for the failures of omissions and commissions of state authorities, and on the non-state parties directly involved in the violence
   - Recommend, guidelines and procedures for police and magistracy, to deal with regulation, licensing, management and control of mass processions

2. Speedy investigation and prosecution of the instigators and perpetrators of the violence.

3. Reassure minority communities of the just and non-discriminatory working of the criminal justice system. Avoid the convenient resort to targeting weaker sections in arrests and incarcerations, whilst culprits remain free to challenge the rule of law and intimidate victim communities.

4. Adequate compensation for victims – especially those killed, injured, as well as those whose property has been destroyed, and their rehabilitation

5. A public programme of social harmony and inter-community dialogue, to restore peace, and rebuild community cohesion.
Ram Navami violence in Bihar

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5. The Risk of Mass Discriminatory Deprivation of Nationality caused by Updating the National Register of Citizens in Assam

4\(^{th}\) September 2019

The Supplementary List of Inclusions and Exclusions (also called Final NRC) of Assam was published on 31\(^{st}\) August 2019, raising fears that it risked arbitrarily depriving the nationality of close to 2 million persons and rendering them stateless. International law prohibits the arbitrary deprivation of nationality and obligates states to avoid statelessness, while guaranteeing the right of every child to acquire and preserve their nationality and to be protected from statelessness. The finalisation of the NRC coincides with the halfway mark of UNHCR’s iBelong Campaign to end statelessness by 2024. On the day the final NRC was published, the UN High Commissioner for Refugees urged India to ensure that no one excluded from NRC is left stateless. The populations at risk are overwhelmingly from minority ethnic, religious and linguistic groups – mostly Muslims and Hindus of Bengali descent - with high percentages of women, children and daily wage workers, all among the most marginalized and excluded communities. The discriminatory and arbitrary manner in which this procedure is being carried out is causing despair among many and has, to-date, resulted in 58 suicides in recent months.\(^{133}\)

1. Background

The National Register of Citizens (NRC) currently being updated was originally prepared in 1951 and is intended to be the definitive register of citizens in Assam. The NRC is unique to Assam and the ongoing update is an outcome of the Assam Accord signed in 1985 between the Government of India and representatives of the Assam nationalist movement at the end of a long-drawn, often violent period. The movement had, as its principal demand, the preservation of Assamese ethnic identity and dominance in the state of Assam, predicated on an ‘anti-immigrant’ agenda which primarily targeted those of Bengali origin. This culminated in 1983 Nellie Massacre, which resulted in the killing of over 2,500 Bengali Muslims. The very essence of this Accord and the NRC updating process that has emerged from it\(^{134}\), is contrary to the basic principles and values set out in the Constitution to protect minorities.

\(^{133}\) file:///Users/sajjadhassan/Downloads/Assam-Suicide-List%20(1).pdf

\(^{134}\) Section 4A(4) and Schedule to Citizenship (Registration of Citizenship and Issue of National Identity Cards) Rules, 2003
According to the procedure, inclusion in NRC was by application followed by a verification process. Those excluded face the risk of being declared “foreigners”, rendered stateless, locked up in detention centres, or excluded as disenfranchised citizens. There is no extradition treaty between India and Bangladesh, nor does Bangladesh or any other country recognise those excluded as its citizens, creating a risk of mass statelessness. This amounts to discriminatory deprivation of the right to a nationality protected under international human rights norms and standards. India is a party to most.

2. Undefined timelines

The NRC is being updated under a programme authorised and closely monitored by the Supreme Court (SC), the apex court of the country, with the Government of India and the Assam state government as key actors. NRC State Coordinator (NRC-SC) administered the exercise, under the direct orders of the Supreme Court. On 17th December 2014, SC approved a timeline for completion of NRC update process by 1st January 2016. This has been revised several times. A total of 32,900,000 applications were received by the application deadline of 31st August 2015. A first (partial) draft NRC was published on 31st December 2017, containing 19 million names. The complete draft NRC was published on 30th July 2018, with 28,983,677 names. A claims and objections process was opened on 25th September 2018, giving the 4,070,707 excluded from the complete draft NRC a second opportunity to be included. A total of 3.62 million claims were received, as well as about 200,000 objections135, the bulk of the latter, according to media reports, on the very last day for accepting objections.136 Initially planned for publication on the 31st of July 2019, Final NRC was published on 31st August 2019, excluding a total of 1,906,657 persons. These left out persons will get an opportunity to appeal before Foreigners Tribunals (FT), a quasi-judicial institution established under the Foreigners (Tribunal) Orders, 1964, and mandated to determine citizenship and detect illegal migrants.137 Despite the show of due process, those whose appeals before FTs are unsuccessful will remain excluded from NRC, de facto ‘declared foreigners’, liable for internment in Detention Centres, awaiting their deportation from India, indefinitely, thus rendered stateless.

136 and mostly by local representatives of the All Assam Students Union (AASU), the youth group that was the spearhead of the Assam Movement https://www.deccanherald.com/national/over-26-lakh-objections-filed-710969.html
137 Para 8 of Schedule to Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003
3. Arbitrary procedures and systematic discrimination

To be included in the updated NRC, an applicant was required to identify a legacy person (parents or grandparents), with a clear mapping of his or her relationship to that person through a family tree, to include all other persons claiming descent from the same legacy person. A set of admissible documents were prescribed as proof of citizenship of the legacy person (List A or Legacy documents). Another list provided illustrations of kind of documents needed to prove the family relationship of the applicant to the legacy person (List B or Linkage document).

The exclusion of such a large number of persons from the final NRC is an outcome of a mix of procedural and capacity failures of the NRC State Coordinator’s Office. Discrimination and arbitrariness lie at the heart of this failure: populations have been segregated into ‘original’ and ‘non-original’ inhabitants – with Bengali and Nepali speaking minorities making up the bulk of the latter. Differential criteria were used to verify claims depending on whether they come from someone deemed an ‘original’ inhabitant or ‘non-original’, by NRC authorities. Despite attempts by parties, Supreme Court refused to define ‘original inhabitants’ or to provide a procedure to identify them. The NRC bureaucracy used this fuzziness as license during physical verifications, to arbitrarily reject documents from those with ‘non-original’ backgrounds. NRC officers commonly based their determination on the assumption that only Assamese-speaking and some indigenous groups were ‘original’, whilst the rest of the population, mainly those of Bengali and Nepali descent, besides Hindi-speakers, were ‘non-original’ inhabitants. ‘Original inhabitants’, SC ordered, did not need to undergo any verification or scrutiny.

As an illustration, of the total 32.9 million applications, 4.7 million were made using Gram Panchayat (GP) certificates, as list B (Linkage) documents. For 1.74 million of these applications deemed ‘original inhabitants’, the SC ordered automatic acceptance of the certificates. But for some 2.25 million amongst this cohort deemed ‘non-original’, it put in place a two-step verification process of checking certificates. This has disproportionately impacted minority women deemed ‘non-original’, who mostly relied on GP documents.

The modalities (called Standard Operating Procedure – SOP) used to process Claims and Objections did not provide much redress against these in-built

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138 Supreme Court of India, Writ petition (c) No. 1020 of 2017, order dated 5th December 2017.
discriminations. It required ‘rigorous scrutiny’ of select official records for them to be accepted, opening the door to arbitrary rejections – during physical verifications – of key documents of so-called ‘non-original inhabitants’. These included, besides GP certificates used by women; birth certificates, school and college certificates and immunisation records used to establish linkage of children to their parents. Bona fide errors committed by applicants in providing ‘legacy data’, that they were prevented from correcting, and stringent ‘family tree verification’ process, together made a bad situation worse. These have resulted in disproportionate exclusion of women and children from final NRC, in many cases it is being reported, despite the rest of the family having been included. ‘Special provisions’ in the SOP meant as safeguards for children below 14 years of age whose parents had been included in draft NRC – including provision for written/oral evidence of parents as admissible - seems not to have helped matters much.

The other large category of applicants that have suffered discriminatory exclusion from NRC are those ensnared in Foreigners Tribunals. ‘Doubtful voters’ (DV); those whose cases were ‘pending in FTs’ (PFT) for a decision; and ones already Declared Foreigners (DF) by FTs, all entirely from ‘non-original’ backgrounds, were put ‘on hold’ by NRC authorities when the draft NRC was published in July 2018, thus excluded. Descendants of DV and DF were also included in this adhoc exclusion. In recent months, state government has undertaken special drives to refer additional cases to FTs, increasing the number of PFTs especially. And in June 2019, NRC authorities published an Additional Draft Exclusion list’ containing some 102,000 names, mostly DV, PFT and DF who they claimed had been included in error in the draft complete NRC (July 2018), and needed to be further verified. In many such cases, applicants were unable to attend physical verification hearings to establish their claims because the notices for hearings arrived late, in some cases on the very day of the hearing, whilst the hearings scheduled several hundred miles away. Most such cases, as well as

140 Authorised by the Supreme Court (WP # 274/2009, dated 01-11-18 and 12-12-18)
141 NRC SC letter to all DRCRs (dt. May 1, 2018) No. SPMU/NRC/Dist-Co-Equip/68/2015/Pl-IV/177, regarding eligibility determination in cases of ‘weak documents’ such as Affidavit, Gaonburha (Village Headman) Certificate, Private School/College Certificate, Immunization records, Ration Cards etc.
143 NRC SC letter to Deputy Commissioners dated 2nd May 2018.
all their descendants, seem to have been excluded from final NRC. In effect, whilst most such persons had been marked as Doubtful Voter arbitrarily without any investigation whatsoever and disenfranchised since 1997, now even their children have been dropped from the final NRC.

An equally problematic provision of the NRC process was making it easier to file objections against wrongful inclusion, including removing the bar on number of objections, doing away with the requirement of the objector to be a local resident and that of a penalty against false and frivolous objections. All these the further compromised due process in NRC updation, and resulted in bulk objections being filed by those with vested interests, reportedly on the very last day for applications, defeating the purpose of NRC updation. When it was reported to SC that Objectors were mostly absent at hearings and the objections did not fulfil administrative conditions, SC authorised NRC SC to resolve matters speedily. This resulted in objections hearings being conducted ex-parte, further making verification outcomes contingent on bureaucratic discretion. Anecdotal evidence points to several names having actually been excluded from final NRC due to objections made against them.

4. A context of discrimination and exclusion

This follows a pattern in how minorities, particularly Bengali-speaking Muslims, have been targeted in Assam’s history of identifying and incarcerating make-belief foreigners. The use by the Assam Border Police of the Immigrants (Expulsion from Assam) Act, 1950 to identify suspected foreigners and the Election Commission of India to mark out only minorities as ‘doubtful’ voters are examples of this targeting. At best, shoddy investigations are made before referring these cases to Foreigners’ Tribunals (FTs). That FTs, set up in Assam in pursuance of Foreigners (Tribunal) Orders 1964, test claims to citizenship made by these so-called ‘suspected foreigners’, using the Foreigners Act, 1946, suggests that the outcomes are foregone conclusions. The Foreigners Act 1946 shifts the burden of proof to the applicant (Sec. 9), who is required to satisfy the tribunal about the genuineness of his or her claim. The fact that victims are mostly destitute and poorly educated, and that government record-keeping is neither efficient nor accessible, makes this threshold arbitrarily high.

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145 https://scroll.in/article/935195/assams-nrc-these-children-could-be-stateless-soon
146 https://www.deccanherald.com/national/over-26-lakh-objections-filed-710969.html
147 Supreme Court of India, Writ petition (c) No. 274 of 2009, order dated 8th May 2019.
A recent investigation into working of Foreigners Tribunal, based on applications under Right to Information Act 2005, provides a grim window into the working of these quasi-judicial bodies. In the tribunals studied, nearly nine out of 10 cases were against Muslims. Almost 90 per cent of those Muslims were declared ‘foreigners’ (illegal immigrants) — as compared with 40 per cent of Hindus tried. Every person the investigators found who had faced the tribunals was from Bengali-speaking ethnic group. Decisions by the FTs were deeply inconsistent, most having been passed ex-parte. Manned mostly by mid to senior lawyers, rather than judges, FTs followed varying procedures, on how notices should be served; whether grounds for complaints could be seen by applicants or their counsels; what documents could be submitted, the content of those statements; the time the accused had to produce witnesses and how witnesses would be examined, how documents would be verified, how hearings would be conducted. Some FTs accepted verbal explanations for variations in age or spellings of names on documents. Others declared people foreigners on the basis of what defendants called clerical errors. In most cases witness testimony was not weighted adequately. Since at least 2016, FTs are also reported coming under extraneous pressures, to declare more foreigners, diluting their ability to act as objective tribunals following due process. Since 1985, FTs have declared more than 100,000 persons foreigner, with a steep uptick since 2016. Of these, 63,959 persons were declared foreigner through ex-parte proceedings, i.e. the accused were not present to defend their case.

It is these deeply flawed bodies that have been tasked to process appeals expected to be made by the 1.9 million persons excluded from the Final NRC – without regard to the ability of these bodies to make the life and death decisions they will. Government has recently notified setting up an additional 200 FTs, taking the total to 300, especially to process NRC appeals. In making appointment of FT members, government sharply reduced selection criteria: advocates with 7 years of experience, and retired civil servants too were eligible to apply, where as FTs were meant originally to be presided by senior judges. Appointments made recently, are contractual, one year at a time. A two-day programme of


149 Lok Sabha debates, Unstarred Question No. 1724, providing figures for 1985 to 28th Feb. 2019. 2nd July 2019.

150 https://www.huffingtonpost.in/entry/assam-nrc-final-list-foreigners-tribunals-judges_in_5d6a9c7be4b09bb9eef0357utm_hp_ref=in-politics
orientation training was all it was felt was needed by these members to start to discharge their duties.\textsuperscript{151} The recent amendment to Foreigners (Tribunal) orders 1964\textsuperscript{152} makes the prospect of FTs acting as effective redress bodies even more remote. Allowing DMs to refer to FTs case of appellants for opinion as to their being foreigner (governed by Foreigners Act 1946), as part of the appeal against decision by NRC authority, governed by Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (Sec 6); and giving FTs discretion to judge merit of an appeal before initiating proceeding (Sec. 10), defeats the very purpose of the appeal, adversely impacting the chance of appellants getting a fair trial. And allowing FTs to determine their own procedures (Sec 17) encourages arbitrariness in the working of FTs, that we demonstrated earlier on, has resulted in serious miscarriage of justice. Given the politicisation of FTs, especially with an eye to target Muslims, the newly established FTs are not inspiring much confidence among the excluded. Several civil society groups have challenged the rules, also proposing model rules for all FTs to use as standard procedure in NRC appeals cases.\textsuperscript{153} But there seems little chance that these challenges will be given due consideration.

State and central governments have of late repeatedly made the point that those whose appeals are rejected by FTs will still not be deemed foreigner, and they will still be able to avail of redress mechanisms. But reading Sec 6 of the rules, it is clear that those whose appeals are eventually rejected will automatically and parallelly have been proceeded against under Foreigners Act, 1946, thus also ‘declared foreigner’, foreclosing any further redress, except the usual through the High Court (HC) and Supreme Court (SC). Once there, to get HC and SC to reopen these cases will be nigh impossible.

While appeals against decisions by NRC authorities (under the Citizenship Rules, 2003), and that against Foreigners’ Tribunals (under Foreigners Tribunal Rules 1964) play out, there are two possibilities for all those who are ensnared in these processes. One is to be interned in Detention Centres. 6 detention centres spread across Assam house 1133 ‘declared foreigners’. 335 of these have been detained for more than three years.\textsuperscript{154} Enquiry by a special monitor of the National

\textsuperscript{151} Supreme Court of India, Writ petition (c) No. 1045 of 2018. Order dated 30th May 2019.
\textsuperscript{152} MHA Order, GSR 409(E) containing Foreigners (Tribunals) Amendment Order, 2019. Dated 30th May 2019.
\textsuperscript{153} These include All Assam Minority Student Union (AAMSU), Justice Forum Assam, and Brahmaputra Valley Civil Society.
\textsuperscript{154} Lok Sabha debates, Unstarred Question No. 1724, providing figures as of 25th June 2019.
Human Rights Commission (NHRC) provides a chilling account.\(^\text{155}\) It highlights the illegality of the centres; indefinite incarcerations and accompanying vulnerabilities suffered by detainees; the lack of any legal redress whatsoever; and the sheer hopelessness of detention conditions. Victims are detained in conditions like convicted prisoners, but without enjoying associated rights, including parole or freedom from indefinite incarceration. In July 2019, Assam government revealed that 25 persons had died in detention, including a 45-days-old child and an 85-year-old partially immobile man.\(^\text{156}\) The NHRC has, to date, not been reported to have taken any action on the findings. A recent intervention on detention centres in the SC has resulted in minor relief for the detainees without mitigating their stateless status: detenus having done more 3 years could be released, subject to execution of bond with two securities, and their biometric and fingerprints being captured, among others.\(^\text{157}\) With the threshold being what it is, the relief has meant little help to most detenus.

The other possibility, given it will be impractical (and a very bad press!) for the state to detain all those among the 1.9 million declared foreigner, will be to strip away at their citizenship rights, reducing the lot formally to ‘half-citizens’. All 4.2 million excluded from the draft list (July 2018) have had their biometrics recorded in a separate database. It is being claimed that the 1.9 million finally excluded, will have their biometrics shared across the various databases maintained by welfare authorities nationally, to prevent them from obtaining aadhar and other registration, now a requirement for accessing most basic services and entitlements.\(^\text{158}\) And their names will likely also formally be struck off the electoral list.

Senior leaders of the ruling Bharatiya Janata Party (BJP), including state and central ministers, have been reported expressing concerns at the reported large exclusion of Bengali-speaking Hindus from the final NRC. Assam Chief Minister Sarbananda Sonowal, is reported to have said that the Centre may consider a law to remove foreigners who could have entered the list and add genuine citizens who could have been left out. And his deputy, Finance minister Himanta Biswa Sarma was quoted claiming “at Dispur (Assam state capital) and Delhi we have

\(^{155}\) Report on NHRC Mission to Assam’s Detention Centres from 22 to 24 January 2018.


already started fresh strategy on how we can drive out the illegal migrants and we will so come up with new plans”, warning “NRC is no quarter final, semi-final and final for driving out Bangladeshis...wait a while and you will see more finals under the BJP regime.”

This anxiety among BJP leadership could embolden efforts at revival of past unsuccessful attempts by the Government of India to salvage the damage of the NRC and Foreigners Tribunal exclusions on Bengali-speaking Hindus, through attempting to amend the Citizenship Act, 1955. The Citizenship Amendment Bill introduced in the Parliament in 2016 sought to fast-track naturalisation for those having entered India – either legally or illegally - from neighbouring countries, whilst excluding Muslims from this scheme. Already all except Muslims from Bangladesh, Pakistan and Afghanistan in India illegally, have been granted general amnesty from illegal immigrant status. The bill lapsed before it could be passed, as the BJP did not have a majority in the Upper House of Parliament. This time round, the party could might be better able to cobble together a majority.

5. Due Process under a cloud

Supreme Court’s order of 2014 kick-starting the NRC update process asked for it to be completed in a time-bound manner, due apparently to what the SC claimed was the ‘magnitude of the Bangladeshi infiltration in Assam’. Allegedly relying on a Government of India statistic from December 2001, the Court stated that there were 12 million illegal Bangladeshi immigrants in India, out of which 5 million were in Assam. Information collected using the Right to Information Act, 2015 – suggests that the figure quoted by the Court was based on hearsay, and that the Government of India does not have “accurate estimate of such illegal migrants, including Bangladeshi immigrants living in the country.” This raises questions...
about the SC’s role in this exercise. The Supreme Court bench hearing the Assam
NRC case is led by Justice Ranjan Gogoi, himself an ethnic Assamese and an NRC
applicant, raising conflict of interest issues. Justice Gogoi was elevated as the
Chief Justice of India on 3rd October, 2018 and continues to hear NRC cases.

6. Unheeded warnings

In a significant move, four UN Special Rapporteurs jointly addressed a letter to the
Government of India in June 2018, communicating concerns that “local authorities
in Assam, deemed particularly hostile towards Muslims and people of Bengali
descent, may manipulate the verification system in an attempt to exclude genuine
Indian citizens from the updated NRC”, warning that “if these allegations are founded,
the updated register poses a dire risk to thousands of Indian citizens who may
wrongfully be declared as “foreigners” and consequently rendered stateless”. In
what is unprecedented, the UN experts have followed this up with two more letters
since, reiterating their concerns and issuing warnings. OHCHR website informs
none of these letters have elicited any response from Indian authorities. Just prior
to publication of Final NRC, United States Commission on International Religious
Freedom (USCIRF) raised alarm about “the potential abuse of the National Register
of Citizens in Assam and the resulting introduction of a religious requirement for
citizenship”, claiming that the ‘religious test’ for Muslims in Assam “had the effect
of undermining the religious freedom for vulnerable religious minorities”. And
in August 2019, Genocide Watch renewed its Watch for Assam, first issued in July
2018, claiming “there are early signs of genocidal process”.

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164 ‘Guwahati advocate asks CJI Misra why Justice Gogoi, an Assamese, is hearing NRC case’. The Print.


168 https://www.genocidewatch.com/single-post/2019/08/18/Genocide-Watch-for-Assam-India—-renewed
6. Assam’s unending search to exclude minorities: The aftermath of NRC

30th November 2019

It has been three months since the National Register of Citizens (NRC) for Assam was published, excluding over 1.9 million persons, effectively making them non-citizens, almost all linguistic and ethnic minorities, women and children making up the bulk. Authorities have emphasised that all those who have been excluded still have a right to appeal, through accessing Foreigners Tribunals (FT). Senior central and Assam state ministers have also been stating that government was bringing in legislation that would, in effect, obviate the need for some among the affected to appeal against their exclusion, rather guaranteeing them a fast track to citizenship. It is now being reported that government is also devising measures to safeguard ‘indigenous Assamese’ interests. Evidence shows that Bengal-origin Muslims will be excluded from all these ostensibly mitigating moves, rendering them particularly at risk to exclusion and statelessness. And in the latest moves, central and state ministers are claiming the final NRC is not acceptable to the government, and that an all-India NRC would be carried out, including afresh in Assam. This briefing paper seeks to provide update on developments in Assam since the final NRC was published on 31st August 2019, as those that are left off the list and their families, wait in anxious anticipation for a possible route back to citizenship.

1. Appealing against exclusion in Foreigners Tribunals

Authorities and the Supreme Court overseeing NRC updation, have sought to clarify that all those left off the NRC are not foreigners yet; that they will all be able to appeal against their exclusion in Foreigners Tribunals.\(^{169}\) To give effect to this, central Government has notified procedures to enable Foreigners Tribunals to process appeals.\(^{170}\) But these procedures are heavily weighted against appellants: all those already declared foreigners by any FT, as well as those against whom

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proceedings are underway, are barred from making appeals. (Clause 7, 8). Not all eligible appeals too will see the light of day, with FTs having the discretion to decide whether a particular appeal has ‘merit’, without a clear definition. (Clause 10). This discretion also extends to how FTs will conduct trials (Clause 17). The 100 or so pre-existing FTs in Assam – that all follow own procedures, many in conflict with established judicial procedures, including those for tribunals - have had a long history of arbitrary and discriminatory practice targeted at linguistic and specially religious minorities.¹⁷¹ The additional 200 FTs established to process NRC appeals, are not inspiring much confidence, given how they are seen as being politicised, especially with an eye to further target Muslims.¹⁷² Several civil society groups have challenged the procedures in the Supreme Court (SC), also proposing model rules for FTs to use as standard in NRC appeals cases.¹⁷³ Despite the urgency of the matter and passage of time, these have not yet been heard by the SC.

Three months on from the publication of final NRC, government is yet to notify the commencement of the appeals process - a crucial document required for making appeals (‘rejection certificates’) is yet to be made available. Given there are potentially 1.9 million of these certificates to be issued, this itself will be an onerous task. Recent changes in NRC bureaucracy, as well as in the Supreme Court bench supervising NRC updation¹⁷⁴, means that the commencement of appeals is still some way off. This uncertainty is causing anxiety among those excluded, with families worried about members excluded from NRC, being declared foreigner and dragged away to detention centres. Women and Children make up the bulk of such left off cases. With the new NRC coordinator reported


¹⁷² ‘Assam: Arbitrary powers to FTs while people are set to face citizenship test’ https://www.newsclick.in/NRC-Citizenship-Assam-Foreign-Tribunals-Powers

¹⁷³ These include ones by All Assam Minority Student Union (AAMSU), Justice Forum Assam, and Brahmaputra Valley Civil Society.

¹⁷⁴ On 18th October 2019, the SC ordered the administrative transfer of the NRC State Coordinator, Prateek Hajela. A new coordinator was given charge by state government only on 8th November 2019. This change of NRC leadership at a crucial juncture in the NRC process is seen as having slowed down the issue of rejection certificates. It is also being speculated that NRC will issue rejection certificates only after the SC gives its final approval to the list of those excluded from NRC. But rather than do that speedily, SC bench hearing the case has fixed 26th November for the next hearing. Ranjan Gogoi, the Chief Justice of India, leading the SC bench on the NRC matter, and one seen as – uniquely for a SC judge – driving rather than just overseeing the administrative process of NRC updation since 2014, when he took over the brief, is himself retiring on 17th November 2019, signalling further uncertainty.
to have made several posts on social media targeting ‘East Pakistani Muslims residing in Assam’ (i.e. Bengal-origin Muslims), the fears among minorities has just shot up several notches.  

Authorities have also been assuring all that exclusion from NRC, even at the end of the appeals process, will not mean automatic designation as foreigner, and that only FTs following established procedure (under Foreigners Act 1946) would have the authority to decide that question. But NRC appeals procedures notified already, requires that all those whose appeals against exclusion from NRC are rejected will also automatically be proceeded against to determine whether they are foreigner, under provisions of the Foreigners Act 1946 [Section 2(A) (iv)]. The outcome of these referrals are foregone conclusions, with procedures themselves built to make foreigners of all those excluded from final NRC. The anxieties among those left off NRC and their family members then, about their future, are not unfounded.

2. Amending Citizenship laws, to include some

The ruling Bharatiya Janata Party (BJP) has been sensitive to these anxieties – but only selectively. Senior central ministers as well as Assam state leaders have been making noises about changing citizenship laws to obviate the need for Hindus excluded from final NRC to go through FTs, rather that they would all be offered naturalisation, part of a grand scheme to offer India as home to persecuted minorities (non-Muslims from Bangladesh and other Muslim-majority countries in the region). This effort is seen as responding to the realisation that - contrary to the long-held assertion by Assamese and Hindu nationalists that the foreigners issue in Assam was a Muslim problem - it is actually Bengali-origin Hindus that could make up at least half, if not more, of those excluded from NRC, rest being Nepalis, various indigenous groups, and Hindi-speaking persons, besides

175 ‘Can’t accept foreigners even if they speak Assamese – New NRC coordinator said on Facebook’. The Print, 11th November 2019. https://theprint.in/india/cant-accept-foreigners-even-if-they-speak-assamese-new-nrc-coordinator-said-on-facebook/319466/
177 Para 2, Public Notice (on final NRC), Addl Chief Secretary, Government of Assam, dated 27th August 2019
178 Governed by Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003
179 Foreigners Tribunal (Second Amend.) Order 2019, contained in MHA order # GSR 623 (E), 30th August 2019.
BJP introduced the Citizenship (Amendment) Bill in Parliament in 2016 - to amend India’s principal citizenship law, the Citizenship Act 1955 - to grant amnesty from ‘illegal migrant’ status and to fast-track naturalisation, for all those having entered India from Bangladesh, Pakistan and Afghanistan, whilst excluding Muslims from this scheme.\textsuperscript{181} Government could not muster a majority in the Upper House of Parliament, and the bill lapsed in 2018. Senior ministers and BJP leaders have recently, and especially since the final NRC was published, been claiming they will reintroduce the bill now to bail out Hindus among the excluded, some even claiming that first the laws would be changed and only then would FT appeals process commence.\textsuperscript{182} The bill is now listed in the legislative agenda of the current Winter session of Parliament (concluding 13\textsuperscript{th} Dec. 2019), and media reports confirm government’s efforts at ironing out some of the differences with tribal groups in the Northeast, for its introduction.\textsuperscript{183} Now commanding a stronger majority, BJP led government is expected be able to carry it through. If this amendment to India’s citizenship regime is legislated, it will create a clear ‘religion test’ for citizenship in India, in contravention of international law, in particular the right to nationality "without distinction as to race, colour, or national or ethnic origin" (Article 5, CERD), and against India’s Constitution which guarantees equality before the law (Article 14) and does not permit discrimination on any ground (Article 15).\textsuperscript{184}

3. From identifying ‘foreigners’ to identifying the ‘indigenous’

For Assamese nativists, who saw in the NRC a silver bullet to address their concerns over illegal migration, a figure of 1.9 million excluded from the list is underwhelming.\textsuperscript{185} For Hindu nationalists among them, as well as for the BJP, fact
that a significant section of these could be Hindus, is disastrous. The aggressive pushing of Citizenship Amendment Bill is BJP’s response to this unexpected outcome. But the possibility of such large numbers of ‘illegal migrants’, even if Hindu, being accepted as citizens of Assam, should citizenship law be amended, is causing much dismay among the Assamese.

To ameliorate Assamese concerns, Central government set up early in January 2019, reconstituted again in July 2019, High Level Committee to recommend measures to implement Clause 6 of the Assam Accord (1985). Clause 6 talks about “Constitutional, legislative and administrative safeguards” that must be provided “to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people”. While Union Home minister had noted, while setting up the committee in January 2019, that Clause 6 “wasn’t fully implemented”. All Assam Students Union (AASU), the prime mover of the Assam Movement and representing Assamese interests on the Assam Accord, characterised the HLC move as an effort (by Government of India) to mislead people before pushing the Citizenship (Amendment) Bill. Government efforts since, seem to have borne fruits. The reconstituted HLC, has Chief Advisor of AASU, Samujjal Bhattacharjee, on it, besides other Assamese groups.

The mandate of the HLC is to “examine the effectiveness of actions taken since 1985 to implement Clause 6 of the Assam Accord, hold discussions with

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188 This was the agreement between Government of India and Assamese student and cultural bodies led by the All Assam Students Union (AASU), that brought to an end a protracted political, later also armed, movement, centred around the question of ‘foreigners’ in Assam, and the alleged ‘step-motherly’ treatment of the state by the Indian government. Updating the NRC was a key aspect of the Assam Accord, besides enhanced ‘development’.


stakeholders, assess the appropriate level of reservation of seats in the state assembly and local bodies for the ‘Assamese people’; and suggest measures to protect the Assamese and other indigenous languages of Assam, besides recommending the appropriate level of reservation in employment under the government of Assam for the ‘Assamese people’.” The committee, which has a six months term, has been soliciting suggestions from the public, on how these safeguards could be formulated.

A crucial question that the HLC seems to be eliding in its deliberations is the definition of ‘Assamese people’, those that, according to Clause 6 of Assam Accord, will be eligible for the safeguards. In its public notices it has been using three separate formulations instead: ‘Indigenous tribes’, ‘Indigenous Assamese’, and ‘Other Indigenous People of Assam’. Linguistic minorities, especially Bengali speaking sections, fear they will be excluded from all of these, a fear founded also on the fact that the HLC has little Bengali-speaking representation, certainly no Bengali-origin Muslims. It has been reported that submissions made to HLC by Assamese groups – including groups at the forefront of NRC updation (Assam Public Works, who submitted a list of 48 groups they consider indigenous) – have called for ethnic Assamese and indigenous tribals to be automatically included, whilst proposing a cut off of 1951 for the rest of the population. This not only adversely affects Bengali speaking persons – for who, under NRC process, the cut off was 24th March 1971 – but also ‘tea tribes’, one of the most marginalised communities in Assam, who are not considered indigenous to the state, having been settled in Assam from central India during British rule to work tea gardens. Given the mandate of the HLC and its linkages to tangible questions of reservations in elected bodies and public employment, besides promoting language and culture, who is included and who is not in these definitions of Assamese People, is a crucial question. Notably, state government has already started using this formulation in its businesses, despite lack of finality on the definition. State cabinet recently decided to award land to landless ‘indigenous’ persons, as part of its new land use policy.


194 Assam Government to give three bighas of land to indigenous landless families. Newslive. October 22,
And characteristic of their disregard for human consequences of their actions, BJP state and central leaders are now also trashing the final NRC. Assam Finance Minister, Hemanta Biswa Sarma has claimed that the final NRC in its present form is not acceptable to the state government. And union home minister, Amit Shah announced recently in the upper house of Parliament, government’s commitment to prepare a country-wide NRC, that would also include it being carried out afresh in Assam.

4. The unending search to exclude

Fact that all these dynamics are playing out parallelly - the fallout of the NRC publication and the wait for the appeals process to commence; BJP’s efforts to bring in the Citizenship Amendment Bill to safeguard a section of the excluded whilst also trashing the NRC, calling for redoing it all over again; and now a move to define those indigenous to Assam, and linking that to opportunities and services - have consequences, especially for those most vulnerable to exclusion. This gradual shift away from NRC (and its being the final test of who is a citizen and who is not) to new modes of defining citizens and citizenship, thus taking away the finality of the NRC process – after having spent Rs 1600 crores ($ 222 million) on it over past ten years, resulting in the death of over 50 persons left off the NRC, by suicide - is remarkable. At a recent event, Ranjan Gogoi, the previous Chief Justice of India, and the man having driven the NRC process over the past years, himself an ethnic Assamese, signalled the shift, when he remarked recently, after the NRC was published:

_NRC, as it may finally emerge, is not a document of the moment. NRC exercise only attempted to ascertain with some degree of certainty the number of illegal migrants. 19 lakh (1.9 million) or 40 lakh (4 million) is not the point. It’s a base document for future._

The Supreme Court has been the arena for much contestation over NRC these

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196 'Why Amit Shah’s promise to extent all-India NRC to Assam will not be easy'. The Scroll. 22nd November 2019 https://scroll.in/article/944460/why-amit-shahs-promise-to-extend-a-pan-india-nrc-to-assam-will-not-be-easy

past years, with several litigations challenging the basis of NRC or specific aspects of it, including one that questions the very use of 1971 as the cut-off date for NRC updation, batting rather for 1951, and which had been referred to the constitution bench for adjudication. It is telling that whilst NRC updation was underway, supervised closely by the Supreme Court, these foundational challenges to NRC process were not deemed important to resolve. With Justice Gogoi having demitted office, and the case being assigned to another bench of the Supreme Court, even the interest in taking the next steps in the legal process of the NRC, towards its closure, seems uncertain, jeopardising the 1.9 million persons left in limbo. The case was listed for hearing on 26th November last, when petitioners had hoped for the court to issue final directions to NRC authorities to issue ‘rejection certificates’, and on a clutch of applications challenging the subsequent appeals process in Foreigners Tribunals. The case was never heard, and no new date has been fixed yet.

5. Multi-tiered citizenship and the road to statelessness

To conclude, it is Bengali-origin Muslims who, in this grand design of the coming together of Hindu nationalists and Assamese nativists, with Islamophobia animating both, are most vulnerable to disenfranchisement, at serious risk of statelessness. Community members - even as they wait in anticipation for closure of the torturous NRC process, or if it would indeed be nullified to be redone all over again - fear a bleak future of a 3-tiered citizenship regime emerging in Assam, with them at the lowest rung.

i. At the top would be ethnic Assamese, and all those considered indigenous, all of who are also included in NRC. With central government pushing the citizenship amendment bill, Bengal-origin Hindus, whether included in NRC or not, will be able to find a place there

ii. Bengal-origin Muslims, even those included in NRC, but not considered indigenous in the HLC scheme of things, will be considered only half-citizens. They will be excluded from reservations to elected bodies and in

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199 Supreme Court Writ Petition (Civil) Order # 274 of 2009, dated 18th October 2019.

200 Recently Assam cabinet approved policy barring persons with more than 2 children from public employment, and from standing for elected office. Muslims in Assam, especially Bengal-origin, have often been the target, stereotyped for having large families. ‘Assam announces two child limit for jobs in govt.’ Indian Express. October 23, 2019. https://indianexpress.com/article/north-east-india/assam/assam-announces-two-child-limit-for-jobs-in-govt-6082931/
Assam’s unending search to exclude minorities: The aftermath of NRC

employment, besides being denied linguistic and cultural autonomy.

**iii.** Bengal-origin Muslims excluded from NRC, and whose appeals are eventually rejected by FTs, will be declared foreigners. It is this section – counting, an estimated 30-40 per cent of the 1.9 million excluded - that stands most at risk of statelessness.

It is these ‘non-citizens’ that are also at highest risk of hate crime and targeting. A recent report by the campaign group Avaaz found hate speech targeted at minorities spreading unabated through Facebook, during the time NRC updation was underway. Bengali-speaking Muslims in particular, were often the targets of hate speech on Facebook. Avaaz found posts on the site calling them ‘parasites’, ‘rats’ and ‘rapists’, and for them to be exterminated, seen 5.4 million times.\(^{201}\) In effect these posts were only echoing the hateful words of senior BJP leaders, now central cabinet ministers, who likened illegal migrants to ‘termites’.\(^{202}\) The situation in Assam draws parallels to the extremist Buddhist campaign in Myanmar, that forced 700,000 Rohingyas to flee their homes. Social media platforms like Facebook besides extremist offline mobilisation played dominant roles there. The parallels with Assam are chilling, something that had led Genocide Watch to renew its Watch for Assam in August 2019, first issued in July 2018, claiming “there are early signs of genocidal process.”\(^{203}\)

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201 ‘Facebook was used to incite violence in Myanmar. A new report on hate speech shows it hasn’t learned enough since then’. The Time. October 29, 2019. [https://time.com/5712366/facebook-hate-speech-violence/](https://time.com/5712366/facebook-hate-speech-violence/)


7. Exacting Revenge: Incarcerating children in Kashmir

December 2019

1. Introduction

On 13th December 2019, the Supreme Court (SC) of India dismissed a Public Interest Litigation (PIL) seeking a detailed inquiry into the illegal incarceration of children by Indian security forces in the former state of Jammu & Kashmir (J&K), concluding that there had been no illegal detention at all. This was in the face of an abundance of media reports indicating largescale detention of minors in security forces crackdown following governments’ abrogation of Art 370 of the Indian Constitution in the state. The BBC, in a report on 23 September, spoke to 17 families whose children were detained by the police.204 Washington Post reported on the detention of two boys.205 A report by Indian news portal, The Print revealed that Police continued not only to detain children, but also force their families to pay for their food while in custody.206 Similar accounts were reported by The Quint.207 Various civil society fact findings of the ground situation in Kashmir corroborate these accounts. The National Federation of Indian Women’s (NFIW) fact-finding report from September 2019 claimed 13,000 children had been detained in Kashmir since 5th August 2019.208 Other reports too echo these.209 Our own research on the ground, conducted between November and December 2019, confirms the detentions.

For the highest court in the land to refuse to take more seriously the grave


allegations involving detention and torture of children in Kashmir, raises serious questions about India’s refusal to adhere to and uphold its own laws and the various international standards relating to protection of children and the right to life and liberty, that it has committed to. This utter disregard for procedure, let alone morality, to assess state practices in Kashmir, by those whose very raison d’ etre is to act to prevent executive excess, speaks of how Kashmir’s reduction to being a zone of exception has been further reinforced, where normal rules and laws do not apply, and its citizens denied the most basic rights.

This briefing will try to shine a light on the illegal detention of minors in Kashmir since the security clampdown on the 5th of August 2019. It seeks to explore the role of the justice system in enabling the continued violation of the rights of the children to protection from exploitation that they are guaranteed by India’s Constitution and her international obligations. We report on a lawsuit brought before the Indian Supreme Court challenging illegal detention of minors in Kashmir, and its casual dismissal there, before examining some of the evidence to the contrary, based on media reports and limited field investigation.

2. Kashmiri children: Bearing the community’s burden

The abrogation of Article 370 on 5th August 2019 by government of India started what would be a long-drawn haul of uncertainty, protest and a communication blockade that continues five months later. The period has been characterized by protests that are quickly quelled by use of force and by detaining activists, politicians and hundreds of young men labelled as ‘stone pelters’. As people in Kashmir continue to protest by following a civil curfew, businesses remain shut and transport keeps off the roads. There have been protests in various areas following which armed forces and police have conducted nocturnal raids and detained young men. To counter these arrests, communities have put up barricades of tin sheet and dug up roads leading to these areas in a bid to prevent forces entry.

The months following the abrogation of Article 370 also saw a ban on gatherings, both political and religious, latter including Eid (August 2019), Muharram (September 2019), and Miladun Nabi (November 2019), when apart from the usual restrictions on congregations and taking out processions, authorities imposed late night curfews. When despite this, processions were taken out, authorities cracked down, tear gassing, pepper spraying, beating and chasing away protesters. Later many young men including minors have been detained. These measures coupled with the way the state managed to abrogate Article 370 – the
assurance against forcible integration with India – has created an atmosphere of an impending doom for Kashmiri youth. Kashmiris have been at the receiving end of gross human rights violations, both documented and undocumented for years, but this year in the garb of ‘bringing peace to the valley’, government has managed to isolate Kashmir from the rest of the world rendering them helpless. It is significant to note that the total communication ban affected essential services and drastically reduced the access of people to these services. In essence Kashmir continues to be an open prison where millions of people continue to be deprived of the most basic rights, even as international organizations express helplessness.

3. The farce of a judicial review

The PIL that sought judicial intervention into detention of minors after the clampdown in Kashmir on 5th August, was filed by two child rights activists in September 2019.210 Basing their contention on several reports appearing in the international and national media revealing detention and custodial torture of children, the petitioners raised the questions of detentions and instances of physical assault of children and reported deaths, in security forces crackdown against civilians in Kashmir from 5th August 2019. They asked for (i) a detailed status report from the government detailing the whereabouts and medical status of all children cited in the media reports, (ii) an age census of all children under detention, and (iii) payment of compensation to affected children.

On 20 September, the Supreme Court (SC) directed the Jammu & Kashmir Juvenile Justice Committee (henceforth JJC), the apex supervisory institution for implementation of juvenile justice law in Jammu & Kashmir and headed by a sitting judge of the J&K High Court, to look into the allegations and file a detailed report within a week. JJC filed its report to the SC on 26th September. On close examination, the review turned out to be the J&K Police’s report, word by word, with no independent verification of facts by the JJC. The report challenged the petitioners’ claims and questioned the veracity of media reports cited in the petition. Yet the report contained a list of 144 children that, information provided in the report revealed, were detained by state authorities from between 5th August and 25th September. Most of them were released on the day of detention, but 17 spent much longer periods of time in police custody, in complete violation of laws and procedures for minors. Characteristically, the report assured that the Police’s dealings with children throughout was “strictly in accordance” with the

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210 WP (civil) 1066/2019, Enakshi Ganguly & Shanta Sinha vs. Union of India.

The report of police, rubber stamped by JJC makes for, at once Kafkaesque as well as farcical reading. The J & K JJ Act 2013 extends protection for ‘children in conflict with the law’. According to this statute, minors cannot be detained by Police for more than 24 hours without being presented before a (district-level) Juvenile Justice Board and cannot be lodged in a jail with adults. Section 18 of the J&K JJ Act explicitly prohibits the preventive detention of juveniles, under Section 107 of the Code of Criminal Procedure (CrPC).\(^{211}\) Section 107 CrPC (security for keeping peace) is the statute of choice for forces in Kashmir for preventive detention.\(^{212}\) A 2012 amendment to the J&K Public Safety Act (PSA)\(^{213}\) 1978, also used frequently for preventive arrests - also prohibits the preventive detention of minors under the PSA. And yet, the very list submitted by the police to the JJC reveals that 70 children - including a 9-year-old, and two 11-year-olds, all from Srinagar’s Batamaloo area - were arrested under Section 107 of the CrPC. An additional 9 children - including a 13-year-old from Budgam, who was kept in custody for 5 days - were shown as being kept under “preventive” detention.\(^{214}\) Thus, by the police’s own admission, at least 79 children - more than half of the cases that were officially acknowledged - were kept under illegal detention, even if some were for only a short period. And yet the report claims no minors were detained and no laws had been broken.

The report has other absurdities galore. The police claimed that a Washington Post\(^{215}\) report on the detention of two boys named Farhan and Junaid, quoted in the petition, was “based on wrong reporting”. And yet, 14-year-old Farhan’s name is mentioned in the police’s own list of incarcerated children (no. 69), listed

\(^{211}\) Section 107 of Chapter VIII of the CrPC, which permits certain pre-emptive, preventive measures against individuals if there is a likelihood of a future breach of peace or public tranquility.


\(^{213}\) The Jammu & Kashmir Public Safety Act, 1978, permits the detention of any person for up to 2 years, without a trial, to prevent him or her from acting in any manner that is inimical to “the security of the state or the maintenance of the public order”.

\(^{214}\) Other sections under which the children were booked included Sec 151 of CrPC (prevent commission of cognizable offence), RPC 307 (attempt to murder), RPC 147,148,149 (rioting and punishment for rioting), RPC 341 (punishment for wrongful restraint), RPC 332 (voluntarily causing hurt to public servant during duty) and RPC 336 (act endangering life or personal safety of others).

as being detained under Section 107 and Section 151\(^{216}\) of the CrPC. Similarly, the police denied the arrest of 15-year-old Momin and 16-year-old Omar from Srinagar’s Umarhair neighbourhood, as reported by TRT World, claiming that the incident was “not corroborated”. However, Momin’s name figures in the police’s list of juvenile detainees (no. 66). The report has several other inconsistencies\(^{217}\) that are difficult to explain away, forcing one to conclude that either the authorities were confident that SC’s bar for cross examining the submission would be deliberately low, or they had utter disregard for the office of the SC and thought that merely following formality would suffice.

Faced with these grave lacunae in JJC’s report, and forced their hand by the petitioners, SC directed the JJC to file a fresh report by 3rd December, after independently applying its mind. In its fresh second report, the JJC submitted that all detentions of minors in the state were in accordance with the law and that there have been no illegal detentions of children.\(^{218}\) A 3 member bench of the SC, in its hearing on 13th of December, accepted the new findings of the JJC, and dismissed the PIL. When the petitioners sought a copy of the new report of the JJC - which is not available in the public domain - the Court agreed to oblige but warned that it would not entertain any further challenges against the findings. When the petitioners brought up the case of the 79 illegal detentions accepted by the police in its first report, one of the judges remarked, “But they were released on the same day. Are you aware what 15-year-olds are capable of doing these days?”\(^{219}\)

4. Blind to injustice

Even as Supreme Court judges were asking JJC to file a fresh report, media reports emerged on the 10th of Nov. 2019, of the family of the 9-year-old listed in the JJC report, countering the state’s version of events. JJC report had claimed, the boy was picked up and released the same day. The boy, an orphan, revealed that he was thrashed before being taken to the police station.

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\(^{216}\) Section 151 of the CrPC permits the police to arrest persons if they have knowledge of a “design to commit any cognizable offence”, without a warrant.


“I started bleeding; but they showed no mercy and took me to the police station. My grandmother had sent me to a baker to buy bread. I showed them the loaf and told them I had no parents. But they paid no heed and locked me up for two days.”
(-name withheld-, 9 years)

Following his detention and release, the boy has become a recluse. He dreads moving out, “fearing re-arrest.”

The Quint reported on another child, Arif, one of the three taken into custody from Srinagar’s Soura locality in late October:

“We were playing in the park when we were picked up. We weren’t pelting stones. The SHO (Station House Officer) came and hit us really badly. Then they pushed us into the Rakshak and hit us repeatedly. They even thrashed us with sticks. Then we went to the police station. They kept us in lockup for two days.” (Arif, 10 years)

“I am scared that the police will pick us up again and lock us up, which is why I don’t step out at all,” Amir (11 years).

The J&K JJA 2013 explicitly prohibits detention of children in police station or lock-up at any stage, and states that all dealings with apprehended children should be done in a child-friendly manner by specially trained officers or social workers.

Earlier, The BBC, in a report on 23 September, spoke to 17 families whose children were detained by the police.

“They came around midnight. They took my husband away. Then they asked us to produce our son in exchange for my husband’s release,” (Mother of 14-year-old boy).

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221 Names changed to protect the children’s identity.
223 The J&K Juvenile Justice Rules, 2014, issued to operationalise the J&K JJ Act, 2013, defines the term ‘child-friendly’ as “any process and interpretation, attitude, environment and treatment, that is humane, considerate and in the best interest of the child.”
The husband, who was released later, said:

“When I go there to see him (son), he starts crying. He says, ‘why did they catch me? I didn’t commit any crime. I didn’t throw stones.’”

Another man, whose son was taken away, revealed a similar story:

“We were asleep. They (police) knocked on the door at 3.30 a.m. They said, open the door or we will break it. I got up, switched on the light and opened the door. They asked me to switch off the light. They surrounded my son with guns. I became numb. When they were taking him away, they said they would release him soon. We were pacing around the garden the whole night. I haven’t seen him since then.”

Our own field research conducted through November and December 2019, where we travelled to various parts of Srinagar, Baramulla, Bandipora and parts of South Kashmir, speaking both to minors who had been detained – ages between 11 and 17 years - and to their families, confirmed the systematic targeting of juveniles that news reports seem to suggest. We came across many cases where minors had been detained and tortured in custody. Many children were detained along with adult family members, including their fathers and brothers, and were released only after repeated interventions by community members. We came across minors who were beaten ruthlessly by the police and central paramilitary personnel, resulting in serious injuries, including fractures and rupture of ear drums. Minors and their families narrated painful accounts of how children were detained and beaten in custody. In none of the cases were children produced before a Juvenile Justice Board – a mandatory requirement according to the JJ Act 2013. A common threat used against families was the booking of the children under the draconian Public Safety Act or under other sections of law, with serious penalties.

Despite all efforts, we were able only to document one case from South Kashmir, of a minor who had been booked and lodged in the sole Juvenile Home in Kashmir, at Harwan.
Testimony

Victim is a 16 year old male, who, the police admits was one of the 144 detained by them after 5th August 2019. Respondent and his family refused to give consent to use the victim’s name, and hence names and any identifying markers have been masked. Date of interview: 12th December 2019.

J&K Police along with paramilitary forces broke into the house of the respondent at 8 pm on 11th of August and started to ransack everything that came in their way. They smashed windows and vandalized vehicles. Police then dragged the respondent’s father from his house and took him to the police station, where he was later tortured. Police asked family members to then bring the respondent to them, which they did the next day, 12th of August. Police later filed a case of stone pelting against the respondent. The respondent was detained in the police station and kept in the same cell alongside his father. The father was released from custody on 14th August. The same day, the respondent was shifted to Harwan Juvenile centre, along with three other minor detainees, where he was lodged for three further days. Respondents was eventually released from Harwan Juvenile Centre on 18th of August.

The respondent’s father, a labourer, is the lone bread earner of the family. Family members said that were shattered when police took away the father and then their young son as well. They are haunted by the unsettling thoughts on the day of incident when police broke into their house – among the casualties was respondent’s sister who in fear of forces, jumped out of the window, breaking her leg, and had to be hospitalised. Family members live in constant fear of the police, and are afraid of speaking to anyone. The respondent’s father is worried about his family and the education of the respondent. The respondent said he was asked in school about his arrest by his classmates, but he is determined to work hard and make his family proud.

PS: Respondent’s father informed later that on 14th December. Police charged the respondent afresh, invoking Section 307 IPC (~ attempt to murder, a serious charge).
Despite evidence which was available to the court when it heard the account on 13th December, 2019, the 3-member bench, in its concluding remarks challenged the petitioners version of violations, claiming that media reports “...had not been confirmed by the independent evaluation made by the (JJ) Committee, which had been directed to investigate the same”, and concluded that the bench was:

“of the considered view that the (JJC) Committee has made an independent examination and verification of the assertions made in the writ petition alleging excesses against children committed since 05.08.2019. The Committee has also visited various jails in the erstwhile State of Jammu and Kashmir in order to verify whether any juvenile had been lodged there. Nothing adverse was noticed by the Committee to suggest commission of any excesses. We are fully satisfied with the findings recorded in the Second Report of the Committee.”

With that, the Supreme Court bench disposed off the writ.

5. Kashmir: A Zone of Exception

India is signatory to United Nations Convention on the Rights of the Child (UNCRC), ratified in 1992. Article 37 (a) of UNCRC states, no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment; Article 37 (b), that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; Article 37 (c), every child deprived of liberty shall be treated with humanity and respect; shall have the right to prompt access to legal assistance [Article 37(d)]; and states shall take all measures to protect children affected by armed conflict [Article 38 (4)]. India is also a signatory to International Covenant on Civil and Political Rights (ICCPR), ratified, 1979, which calls for accused juvenile persons to be separated from adults and brought as speedily as possible for adjudication [Article 10 (2)(B)]; and that juvenile offenders are segregated from adults [Article 10 (3)].

Indian Constitution also enjoins on the state to create conditions for healthy growth of children and protect their exploitation [Art 39 (F)]. The National Policy

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for Children, 2013, calls for creating a caring, protective and safe environment for all children and commits to taking special protection measures to secure the rights and entitlements of children in need of special protection. The regime for children in conflict with the law in Jammu & Kashmir, is the J & K JJ Act 2013, a fine piece of legislation. It states, in no case shall a juvenile in conflict with law be placed in Police lock-up or lodged in a jail, [Section 11 (1)]; and no proceedings shall be instituted against the juvenile under Chapter VIII of the CrPC. [Section 18]. Other provisions are equally protective. The corresponding J&K Juvenile Justice (Care and Protection of Children) Rules, 2014, further elaborate these progressive provisions. It states, among others that juveniles shall be apprehended only in cases of his alleged involvement in serious offences entailing a punishment of 7+ years imprisonment for adults, [Section 11 (1)]; the juvenile shall not be kept in Police lock-up or jail at any stage in the course of preliminary enquiry and investigation, [Section 14 (4)]; and no juvenile shall be handcuffed, chained or tied with ropes or any other material at any stage, [Section 14 (5)].

And yet reality is so far distanced from precepts - only this is more a trend from the past, rather than a recent exception. A 2018 report examining the working of the juvenile justice system in Kashmir had noted many limitations of the J&K JJ Act, 2013. Most damningly, it had concluded that there was virtually no implementation of the JJ Act on the ground, with many of the provisions of the law being completely ignored.\(^\text{226}\) The authors claimed children continued to be routinely arrested or ‘picked up’ by the police, as if they were adults. Police enter children’s homes with guns, handcuff them during their arrest and transportation to Police station. There they are often kept for days, along with adult detainees, before ever being produced before a magistrate. But due to the police’s practice of deliberately recording apprehended children as being above 18 years of age, it is difficult to estimate accurate numbers of detainees.

Lawyers at the J&K High Court confirm these trends, maintaining that the preventive detention of children in Kashmir has been continuing unabated since the 1990s. As an indicator, Advocate Shafkat Hussain, a senior lawyer has represented over 200 children booked under the PSA in the year 2016 alone.\(^\text{227}\) The sheer ubiquity and arbitrariness of the use of illegal practices by the police against juveniles, whilst a juvenile justice system is in place – with

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226 Bhat & Mander, 2018

laws, institutions and procedures - has, according to the authors, resulted in a complete breakdown of trust in the justice system.\textsuperscript{228}

In 2008, the UN’s Working Group on Arbitrary Detention (UNWGAD) had taken note of the prevalence of the use of arbitrary detention of children in Kashmir. Commenting on the case of 16-year-old Mehraj-ud-din Khanday, the UNWGAD remarked that his detention was not only arbitrary, but also a violation of the International Covenant on Civil and Political Rights (ICCPR), of which India is a signatory. (Box 2) A June 2018 report of the Office of the UN High Commissioner for Human Rights (OHCHR) also took note of the practice of arbitrarily detaining Kashmiri children. In October 2016, Human Rights Watch (HRW), Amnesty International and the International Commission of Jurists (ICJ) jointly called on the Indian state to cease arbitrary detentions under the J&K Public Safety Act (PSA), particularly of children.\textsuperscript{229}

### 6. Conclusion

Observers have noted that no examination of the failings of the juvenile justice system in Kashmir can be complete without factoring in the region’s unique political context of securitisation and militarisation. The arbitrariness of the security forces, the massive and all-pervasive surveillance state, and the state’s concerted efforts to discipline Kashmiri youth using the instruments of torture, abuse and illegal detention, have all contributed to the entrenchment of a culture of oppression in the region. The first step in dismantling this culture would be to acknowledge the existence of a problem, and to commence efforts to ensure the complete disengagement of security forces from dealing with children. Instead, the state administration and the security forces have peddled lies at every level about their steadfast and systematic attempts to browbeat an entire generation into submission, thus perpetuating a vicious cycle of criminalisation and alienation.

With Jammu & Kashmir now formally downgraded to Union Territory (UT) status, essentially coming under the direct control of the central government in New Delhi, the last vestiges of hope are being stripped even from those who once clung to the possibility of a reconciliation with the Indian state. The talk in New

\textsuperscript{228} Bhat & Mander, 2018:

Delhi, meanwhile, has shifted to giving the security forces in Kashmir a “free hand”. Kashmir’s children are bound to continue to be caught in the crossfires.

The Supreme Court, the highest court in the land, has in the past stressed the importance of prioritising rehabilitation and compassion when it comes to dealing with children. “It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps in jail,” the Court had noted once. Sheela Barse & Ors vs Union of India & Ors on 13 August, 1986; https://indiankanoon.org/doc/525548/  

Today, however, the Court cannot spare more than “an hour” to entertain an attempt to introduce at least a semblance of transparency and accountability. SC Accepts JK Juvenile Justice Committee’s Findings Against Allegations Of Illegal Detention Of Children In Kashmir https://www.livelaw.in/top-stories/sc-accepts-jk-juvenile-justice-committees-findings-that-no-children-are-illegally-detained-in-kashmir-150774  

As the supposed parens patriae of the children of Kashmir, the state is expected to act as the parent of all children in need of protection. Instead, justice institutions has opted to follow policies in Kashmir that inflict deep and long-lasting physical and psychological damage upon Kashmir’s innocent children. History is unlikely to judge this kindly.

**Annexure**

**Case study – 1: Baramulla district**

*Baramulla district in North Kashmir was one of the areas that saw protests post the abrogation of Article 370 and also detention of many people including minors. Our researcher travelled to parts of Baramulla to speak with minors who were illegally detained. Although making time to speak with the researcher, the minor and their parents refused consent for documentation. We therefore decided not to use individual testimonies. Researchers then talked to other people in the community to corroborate the version of the minor and their families. Consent was taken to document a synthesised narrative – drawing on several interviews. There were 7 minor boys picked up from the area and kept in custody unlawfully for 3 to 4 days. The names of the victims, their families, names of villages and police station too are not being used. According to the families, Police have noted down the details of the minors and kept their pictures to be able to continue to keep up the pressure on the children and their parents*

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230 Sheela Barse & Ors vs Union of India & Ors on 13 August, 1986; https://indiankanoon.org/doc/525548/  
232 The names of victims, FIR details, court details and names of village etc have been left out to protect the identity of minors.
A stroll through the market

One of the seven minors picked up from a village left home after helping his mother with household chores. He was on his way to buy medicines and was accompanied by some friends. On the highway, near a CRPF camp, the minors got involved in a protest. According to the victim’s father, the minor got emotional and threw a stone at the armed forces personnel. The boy, a 13 year old was immediately apprehended by a joint team of police and CRPF who beat him ruthlessly on the road itself. The account was corroborated by a woman who happened to be an eye witness and later came looking for the boy in his village. She narrated how the armed forces had descended on the child like a ‘pack of wolves hungry for blood’ and how she had to look away as she feared the boy would be dead by the time the police personnel were done with him. Later when the mother of the child was informed by local boys of her son being detained, she went to the protest site to plead with the SHO of the local police station and asked the whereabouts of her son. She was redirected to the major of the Army camp who showed the mother a video of the minor taking part in a protest. By that time though the minor had been detained along with his friends, also minors in the local police station. During the detention, children all aged between 12 to 14 years, were severely beaten resulting in injuries to all of them. A couple of them were left with serious injuries; one with a fractured arm and another with a ruptured ear drum. No charges were filed against the children and they were detained unlawfully in the police station for four days, during which period the families of the minors and elders of the village repeatedly visited the police station to plead with the SHO for the children’s release. For four days in succession, family members were asked to revisit the station but the children were not released. However, finally on the eve of Eid al Adha, the boys were released after the elders and the families assured the Police that their children would never be involved in any protest. The Police however told the families that they had photographed their children and taken their details for ‘necessary action’ in case they were found to be involved in any act against the police in the future.

Deep sense of fear

The minors that we talked to were severely traumatised; they complained of physical pain and discomfort and of recurring nightmares and sleep disturbances. The threats made by the police have affected the mobility of the minors, with families being reluctant to let them out of their sight for long. Family members of the minors have been accused by authorities of encouraging their children in
acts that they perceive as being against the law and ‘detrimental to social order’. The impunity that the Police enjoys is reflected in their blatant disregard for the law – JJ Act 2013 - that is meant to protect minors from unlawful detentions. Given these circumstances it is understandable that the families do not want the cases of their minor children to be highlighted. As the father of one of the boys said to us, “we understand that our child was injured badly, but we have put it behind us. We don’t want any kind of justice; we are just happy that there is no record against him right now”. There is no accounting for the tremendous psychological fallouts of the detention and subsequent torture of the minors, either on them or their families. There is absolutely no mention of the costs involved in getting the treatment for the injuries these minors have sustained in detention; there is just a relief that there is no ‘criminal record’ against their names and their future can still be salvaged. In such a scenario, where the Indian state has managed to enter deep into minds of people to create a fear for their very existence, silence seems to be a the only response.

Case study – 2: South Kashmir

The detainees were held on the charges of stone-pelting on 11th of August 2019. The situation in south Kashmir was very volatile in the aftermath of abrogation of Article 370. Stone-pelting and clashes with armed forces at different place was a constant feature. On August 11, 2019 there was heavy stone-pelting on NH-44 near railway flyover. Police, on the same evening arrested one of the minors while he was travelling home on a scooter. He was then frisked, threatened and beaten up by Police personnel. “He was forced to take the name of other friends from the same village, also minors” said one of the eye-witnesses. The police along with paramilitary forces then came to the village as night was setting in for a raid. They vandalized every vehicle parked outside of the houses of residents. They forcibly entered into the houses of the other three minors and broke windows of the houses. There was a palpable fear in the air that evening and the following days. Everyone in the village seemed to be terrified by the unfolding of events. The fathers of the two minors were dragged out from their houses and taken to the nearest police station. One of the minor’s father said that they were beaten ruthlessly in the police station. The police asked them to produce the accused immediately. However, when their sons were produced before the police, they were not released for two days. The accused minors were lodged in the same jail alongside their fathers, in clear violation of the juvenile justice rules. The father of one of the minors was threatened by the Police, holding him responsible for any stone-pelting incident that took place in the area in future.
The family then hired a lawyer and went to the district court to apply for bail – which was finally granted on 14th of August 2019. They children were then shifted from police lock up to Harwan Juvenile home where they were held for another three days. One of the accused, said that he felt relieved in the juvenile home because he was allowed to play and move around. They were released from the Harwan Juvenile centre on 18th of August 2019. However, the Police has filed a fresh report in the court on 14th of December and charged the four minors under section 307 IPC – attempt to murder. This is devastating news for the families.

Parents of all minors are poor – typically, fathers are labourers the only earning members of the family, mothers are carers. This incident has impacted their daily lives greatly and there is terror in their eyes as they recall the incident. The criminal proceedings has highly demoralised them and crushed their hopes of getting out of this mess. The families are worried about their sons’ education and welfare. They seem to be so traumatized by the unfolding of the events.
8. Maiming to Silence: Continuing to use Pellet Guns Against Protesters in Kashmir

27th Sept. 2019

1. Introduction

A day after Jammu & Kashmir (J&K) state was, on 5th August 2019, put under lockdown and information blackout along with abolition of its autonomous status, Asrar Ahmad Dar, a 16 year old youth, was hit by metal pellets fired by security forces in capital Srinagar. Multiple pellets were lodged in his skull and eyes, X-Ray scans showed. Asrar succumbed to his injuries on 4th September 2019. Pellet-firing shotguns, as security forces’ weapon of choice to contain protests, have in the time since the clampdown in Kashmir, it would seem, returned with a vengeance. Huffington Post reported at least 40 persons with pellet injuries brought in to the Shri Maharaja Hari Singh (SMHS) hospital in Srinagar in the first 4 days of lockdown. Al-Jazeera claimed as many as 152 persons were being treated for pellets and tear gas injuries at the state’s other large hospital – Sher-e Kashmir Institute of Medical Sciences (SKIMS). The two hospitals treat the bulk of all serious injuries in the state. The Telegraph reported how, teenagers were themselves removing pellets with forceps and avoiding going to hospitals, for fear of being arrested. Our own research shows that between 5th August and 11th September 2019, 55 persons with pellet gun shot injuries registered in ophthalmology ward of SMHS. This was, according to SMHS sources, only a sub-set of the total likely injuries, mostly those living in the vicinity of the hospital able to access it despite the lockdown. There was no way to know how many had been injured in the rest of Srinagar and the state, outside the capital, given the lockdown and a general targeting by police of anyone remotely seen as potential protester. Widespread use of pellet shotguns is now beginning to be reported


237 Interview, anonymised. SMHS hospital, Srinagar, 12th September 2019.
from outlying areas of the state too, 50 days into the shutdown.\textsuperscript{238} And for the first time in recent years, Government has confirmed the use of pellet guns in Kashmir. The state administrator, Governor Satyapal Malik, admitted at a press meet, that there were some pellet injuries caused in police action against protesters.\textsuperscript{239}

2. A history of arbitrary and excessive use of force

Since at least 2010, Jammu & Kashmir state police and Central Reserve Police Force (CRPF), have used pellet-firing shotguns (correct name: ‘12-guage shotguns’, using ‘No 9 shot’ made of lead-alloy) to quell street protests in Kashmir. This, supposedly as ‘non-lethal’ alternative to use of live bullets, after the killing of over 120 civilians in police action using live ammunition against protestors in 2010 led to media attention and outcry.\textsuperscript{240} Pellet guns are hardly ‘non-lethal’, each pellet (containing typically some 600 small iron/lead balls) disintegrates on being fired and is the cause of the mass injuries reported especially in the latter part of 2016 and since\textsuperscript{241}, most notably to the eyes, in a very large number of cases causing permanent blinding, besides other physical injuries.

Data is patchy, but pieced together, it presents a picture of widespread and long-lasting physical and mental harm. Information accessed using Right to Information Act 2005, shows that the overwhelming majority of injuries caused to civilians by state forces from mid-2016 to early 2017, were by pellet-firing shotguns.\textsuperscript{242} According to state government, between 8\textsuperscript{th} July 2016 and 27\textsuperscript{th} February 2017, 6,221 persons were injured by pellets; among the victims, 728 had eye injuries. Of these, 54 persons ended up suffering some form of visual impairment.\textsuperscript{243} Information tabled in the Parliament also admitted that between July 2016 and August 2017, 17 persons died of pellet injuries.\textsuperscript{244} So widespread were pellet shot

\begin{enumerate}
\item \textsuperscript{238} ‘Hours after a late-night knock, entire neighbourhood reduced to pellet injuries’. The Wire. 24th Sept. 2019. \url{https://thewire.in/rights/kashmir-forces-pellet-injuries}
\item \textsuperscript{239} ‘36 suffered pellet injuries since August 5; official’. The Hindu. 28th August 2019. \url{https://www.thehindu.com/news/national/36-suffered-pellet-injuries-since-august-5-official/article29280622.ece}
\item \textsuperscript{240} ‘Why the Kashmir protest in 2010 and 2016 are different?’ Hindustan Times. 18th August 2016. \url{https://www.hindustantimes.com/india-news/kashmir-s-summers-of-discontent-why-the-protests-in-2010-and-2016-are-different/story-xy9w5KIPQ7VGSehQcwI2bM.html}
\item \textsuperscript{241} In largescale protests across Kashmir following the killing of militant commander, Burhan Wani.
\item \textsuperscript{242} Association of Parents of Disappeared Persons (APDP) pellet gunshot RTI files.
\item \textsuperscript{243} J & K Legislative Assembly, Unstarred Assembly Question No.330, 12 January 2018, Annexure-A. Available from \url{http://www.jklegislativeassembly.nic.in/replies2018/12jan/UN330.pdf}
\item \textsuperscript{244} Parliament of India, Rajya Sabha, Unstarred Question no. 511. Available from \url{http://rajyasabha.nic.in/}
\end{enumerate}
injuries in 2016, especially to eyes, that New York Times called it “an epidemic of
death eyes”\textsuperscript{245}, and The Guardian labelled it “the world’s first mass blinding”\textsuperscript{246}. In
November 2018 a 19-month old girl became the youngest victim of pellet injury,
losing vision in one eye.\textsuperscript{247} According to the latest UN report on the situation
of human rights in Kashmir, between mid 2016 to end 2018, 1253 civilians were
blinded by metal pellets used by security forces.\textsuperscript{248}

\section*{3. Injuries to body and mind}

Injuries caused by pellet shots are severe, and long-lasting. Besides facial
deformity, since they normally stay lodged with victims, there are several delayed
presentations of these injuries: breathlessness, perspiration, hearing impairment,
and neuralgic pain, among others, all affecting patient wellbeing.\textsuperscript{249} But it is injuries
to the eyes that are the most damaging. These include secondary infections,
inability to concentrate for long, and in the more serious cases, blinding, including
to both eyes.\textsuperscript{250} A study by Srinagar-based SKIMS hospital in 2014 found recovery
for those hit in the eye, very low.\textsuperscript{251} Victims also face serious mental health issues,
including symptoms of psychological trauma.\textsuperscript{252} These included, from our cohort

\begin{thebibliography}{99}
\bibitem{ Guardian 2016} ‘India’s crackdown in Kashmir. Is this the world’s first mass blinding?’ The Guardian. 8th Nov. 2016. \url{https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding}
\end{thebibliography}
of 30 survivors, complaints of trauma, anxiety, moodswings and nightmares. Most survivors of school going age, had dropped out of school, unable to carry on with their studies, due to loss of vision and complications as a result of the injuries. The economic impact on family too is severe, starting with the high cost of treatment, that often must go on for several years, each surgery to restore vision costing between INR 10,000 – 40,000, as well as loss or reduced family income where the survivor was a working adult. Many survivors we spoke with, had experienced reduced earnings as their ability to work had been affected, and had thus moved from hitherto skilled to semi-skilled and often unskilled employment.

A particular consequence of being a pellet shot survivor, is often also the survivor’s criminalisation as a ‘stone pelter’ “subjected to repeated cycles of illegal and unrecorded arrests on the basis of suspicion and profiling, prolonged detentions, inhuman treatment, release and re-arrest at the slightest indication of political unrest.” Among our cohort of subjects, especially juveniles had been detained by police on several occasions, sometime under the draconian Public Safety Act, 1978, often using a system of ‘open FIRs’ to hold them in continuous recurring preventive detentions. The indiscriminate harassment, illegal detentions and torture means especially young survivors are caught up in a vicious circle, from where escape is difficult.

4. Absence of relief

Government has done little to provide relief. State government was reported having announced, in 2016, a meagre financial assistance for a mere 54 victims with pellet injuries and government employment to 12 others. But it is the disregard for access to justice for victims that has been most notable. There is only one reported case of a special investigation having been ordered into death

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253 Research was conducted between May and September 2019, with a sample of 30 pellet gunshot survivors, mix of children and the elderly, most being young adults, from across Kashmir valley, to understand the circumstances of their injury; the health, social, educational and livelihoods consequences survivors face on a daily basis; and their struggle for justice and closure.


255 FIR: First Information Report registered with police, being the first step of a criminal proceedings.

due to pellet guns.\textsuperscript{257} There is no information of the findings of this investigation or of any punitive action taken as a result. Alongside, and in response to media attention, the central Ministry of Home Affairs set up in July 2016 a Committee of Experts (CoE) to look into alternatives to pellet guns. In August that year the CoE was reported to have submitted its findings. This was not made public, although CoE members were quoted in the media claiming that the use of pellet guns would not be stopped.\textsuperscript{258} Earlier, in July 2016, J&K High Court Bar Association, a platform of lawyers, had brought a Public Interest Litigation before the state High Court (HC) asking for ban on use of pellet guns by police and other forces. The application was dismissed, with the HC bench remarking “as long as there is violence by unruly mobs, use of force is inevitable”.\textsuperscript{259} The petitioners subsequently moved the Supreme Court of India (SC), in December 2016, there too without much success. The two-member bench of the SC, headed by the Chief Justice of India were reported remarking that that it would ask the Centre not to use pellet shotguns, if there was no violence, no stone-throwing and students returned to class”.\textsuperscript{260} After much procrastinating, in July 2019, Supreme Court referred the matter back to the state High Court to decide on the initial plea by petitioners.\textsuperscript{261} The proceedings drag on, without any direction to put an end to use of pellet shotguns. Throughout, and up until the current clampdown, when injuries caused by pellet guns have spiked, use of pellet guns have been reported widely, especially from southern Kashmir\textsuperscript{262} resulting in a steady stream of blinding and injuries.\textsuperscript{263}


\textsuperscript{258} ‘Pellet guns are here to stay: Committee Suggests alternatives’. The Hindu. 29th August 2016. \url{https://www.thehindu.com/news/national/Pellet-guns-are-here-to-stay-committee-suggests-alternatives/article14620019.ece}


Amid these contestations, it has been reported in the media that Defence Research and Development Organisation (DRDO), a Defence Ministry undertaking, had developed plastic bullets for use in Kashmir. These have never been used in any part of the country and will be tried, like lead pellets, for the first time in Kashmir. They are claimed to be less lethal than the pellet guns currently used in Kashmir, but according to a DRDO official, they can prove fatal if they hit the face or any vital organ.264

5. Disregard for domestic procedures and international norms

Pellet-firing shotguns are banned as crowd control weapon the world over, and their use has not been reported anywhere else in India. This is precisely because they are not 'non-lethal' or 'less than lethal' as Indian government and security forces have sought to portray them, given serious injuries as well as several fatalities, that have been reported. Pellet shotguns are also inaccurate and indiscriminate, in that the pellets disintegrate after being fired, and hence it is impossible to direct the fire at a specified target. Information gleaned through Right to Information Act 2005 with the Khadki Ordinance Factory, main manufacturer of pellet cartridges in India, revealed that there was no information on the efficacy of pellets as a riot control ammunition, also that the manufacturers had conducted no tests on the weapon to assess its effects on the human body.267 Yet pellet guns continue to be used by security forces freely in Kashmir. Besides protestors, often stone-throwing, a large number of those injured have been non-protestors, including young children, older women and elderly bystanders and those indoors, inside houses in the vicinity of protest sites, as well as journalists covering protests.

A basic tenet of crowd control is the use of minimum force and proportionality. Existing Standard Operating Procedure (SOP) used by Police and central forces, including those for use of pellet-firing shotguns, define this.268 However there is a

265 Including where they have been used in the past, notably Northern Ireland/UK, Israel, Spain (Catalonia) and Egypt. Public protests and litigation brought an end to their use in all those situations.
266 A case was recently reported on 15th July 2019, in Madhya Pradesh state. State Government was reported having ordered an enquiry into the circumstances of its use.
268 “Standard Operating Procedures to Deal with Public Agitations with Non-Lethal Measures”, BPRD.
vast body of evidence available now to point to security forces in Kashmir using pellet guns as the default weapon to quell protests, and cases routinely reported of their use also on on-lookers and non-protestors, not necessarily the ‘most violent section’ of the stone pelting crowd, as required per SOP; at close range; the vast majority of injuries being to the face and to eyes; and several cases of their use against emergency services too, ambulance drivers transporting the injured, even against hospital doctors and paramedics, besides non-protestors. All these – in effect, intentional use of excessive force, to the point of serious injury - violate SOPs in place.

Our own research with pellet gunshot victims confirmed the indiscriminate and intentional use of these weapons. Of the 30 cases we studied in different parts of Kashmir valley covering the period mid 2016 to June 2019, a majority of victims claimed they were either spectators or bystanders, not part of the protesting group. Some were also children, others elderly. Clearly pellet guns had been used indiscriminately, without much regard for discretion. And of our sample cases, a majority had sustained pellet injuries at close range and to the upper torso. There were also cases of women and the elderly targeted inside their homes. In most cases, the injuries seemed to have been caused intentionally, to maim.

Use of pellet-firing shotguns as a crowd control weapon by security forces in Kashmir, resulting in serious and permanent injuries not only to protestors but also non-protestors, is a serious denial of rights of citizens. It violates Art 21 of Indian Constitution (Right to life and to proportionality); various sections of the J&K Criminal Procedure Code (dealing with protestors, and with the degree and manner of use of force); police and CRPF Standard Operating Procedures (SOP, 2010) for dispersal of mobs and maintenance of law and order in the state, and SOP to deal with public agitation in a non-lethal way (2011).

Continued use of pellet firing shotguns also violate international laws governing use of force by security forces, specifically:

- UN Basic Principles on the Use of Force and Firearms, 1990: force should only be used when unavoidable, and law enforcement officials should...
“exercise restraint” in using force and “minimize damage and injury”. Causing permanent disabilities and deaths, including to women and children, means that the use of pellet guns goes much beyond the stated objective of crowd control, and hence its use is violation of this law.270

- UN Code of Conduct for Law Enforcement Officials, 1979: law enforcement officials may use force “only when strictly necessary and to the extent required for the performance of their duty”. 271

- Resolution 38/11 adopted by Human Rights Council’s on guidelines when responding to protesting citizens, specifically referring to use of ‘lethal’ and ‘less than lethal’ weapons, calling for ban on use of lethal weapons against crowds, and for investigation in case of any death or significant injury, as well as for proper testing of less-than-lethal weapons.272

The use of pellet shotguns does not comply with these standards, as the weapons are inherently inaccurate, and their use by forces in the state is indiscriminate, carrying the risk of causing serious injury, including to bystanders and others who are not targeted.

Their use also violates India’s obligation to protect right to life and health and uphold freedom of expression and assembly. In particular the continued use of pellet shotguns violates the several international conventions. Besides the Universal Declaration of Human Rights (Art 3: everyone has the right to life, liberty, and security of person), and International Covenant on Civil and Political Rights (Art 6: every human being has the inherent right to life, including right to decent life, a life with dignity), they specifically violate the following:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987. India has not yet ratified the convention though.

- Convention of Rights of the Child, 1989, especially the “obligation of all state parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children”. [CRC, General Comment 8 (2006)]. India has ratified.

- Convention on Rights of Persons with Disabilities, 2006, especially the obligation to “promote the full realization of all human rights

270 https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx
271 https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx
and fundamental freedoms for all persons with disabilities without
discrimination of any kind on the basis of disability”. India has ratified.

- Covenant on Economic, Social and Cultural Rights, especially the Right
to Health (Art 12), that obligates state parties to, among others, maintain
essential primary health care and not allow any kind of interference to
access to medical care. India has ratified.

6. Structures of Impunity: Justice institutions failing the test

J&K Police and CRPF personnel have used pellet shotguns on civilians in Kashmir
since at least 2010, indiscriminately and in many cases intentionally. No member
of the force has been held liable for the disproportionate damage that has been
caused to civilians. This lack of accountability is remarkable and all pervasive.
Problem of accountability exists at two levels; firstly, with respect to laws that
grant immunity to security forces in Kashmir and secondly with respect to the
lack of implementation of the mechanisms of checks and balances. The principal
barrier to justice in Kashmir is the existence of the Armed Forces (Jammu and
Kashmir) Special Powers Act, 1990 and protection granted to armed forces by it.
CRPF personnel are deployed in Kashmir by central government and protected
by its laws. Section 4 of AFSPA allows the armed forces to use any amount of force
in order to maintain public order. It exempts them from being held accountable
even for death caused in the exercise of such duty. Section 7 of AFSPA disallows
any prosecution, suit or legal proceeding from being instituted against any
member of the armed forces until the central government gives sanction. No
sanction has been granted to date, despite several requests in a variety of
cases.273 Further, Section 197 of the Criminal Procedure Code (as applicable
in J&K) prevents complaints against state police officers from being filed until
there is sanction from state government. This too has seldom been given, thus
insulating state forces too from accountability. These laws then have in-built
mechanisms of impunity, allowing J&K Police officers and CRPF personnel to
escape liability for their actions. Commenting on AFSPA, UN High Commissioner
for Human Rights noted in their recent report on the situation of human rights in
Kashmir, “they have created structures that obstruct the normal course of law,
impede accountability and jeopardize the right to remedy for victims of human
rights violations.”274

273 ‘In 20 years, Centre denied prosecution sanction under AFSPA in all cases recommended by J&K Govt
against Army men’. Outlook. 20th January 2018. https://www.outlookindia.com/website/story/in-20-years-
centre-denied-prosecution-sanction-under-afspa-in-all-cases-recommen/307132

274 OHCHR. Update of the Situation of Human Rights in Indian Administered Kashmir and Pakistan
And despite directions from the Supreme Court to balance the need to protect officers discharging their duty in good faith, with the right of citizens to be protected against excesses by the officials,\textsuperscript{275} security forces in Kashmir have never had any penal action pressed against them for their violations. Other systemic weaknesses include the absence of the independent Police Complaints Authorities, J&K Government having refused to set them up despite Supreme Court mandating it for all states.\textsuperscript{276} But the Supreme Court itself has done little to redress violations in J&K, as we saw in the application to ban pellet shotguns and hold officers to account. Despite mounting reports from credible sources, of systemic human rights violations by state forces against civilians, Supreme Court – that otherwise portrays itself as activist in defence of freedoms - has never taken suo moto action to restore the fundamental rights of the people of Kashmir. Other redress institutions do worse. Amnesty International, in a recent report on Kashmir, concluded that the J&K High Court had “failed to adequately defend human rights principles enshrined in the Constitution of India and international human rights law and standards”.\textsuperscript{277} And the National Human Rights Commission and J&K State Human Rights Commission, both with mandate specifically to defend human rights of citizens, have delivered little. The State commission’s directions to state government to develop “solid and secure policy for the rehabilitation of pellet victims especially for those who have lost eyesight with little or no possibility of regaining vision”, has not resulted in any reported action.\textsuperscript{278}

7. Conclusion

The Kashmiri scholar, Athar Zia has, in the context of the continuing and widespread use of pellet-firing guns against civilians, argued that the Indian state uses the ‘right to maim’ to blind Kashmiri subjects by “perfecting a technology of punishment that produces bodies incapable of physical resistance and as a representational threat to the rest of society.”\textsuperscript{279} This may well be the case, given there has not been a single instance of erring officials and the command

\textsuperscript{275} Bakshish Singh Brar Vs Smt. Gurmej Kaur and Anr. I988 AIR 257, 1988 SCR (1) 450 https://indiankanoon.org/doc/961177/


leadership being held to account, despite mounting evidence of violation of national and international laws and procedures when pellet guns are directed at civilians in Kashmir. Lack of remedial action in favour of victims, including the failures of the highest courts, bolsters impunity among so-called duty bearers and hardens perceived sense of injustice felt by victims. This reinforces the vicious cycle – of the use of indiscriminate and intentional force against civilians, in a context of widespread violations and associated impunity by the state, and the resultant youth alienation and protest. This vicious cycle must be broken.
9. 210 days of Shutdown: ‘A desolation called Peace’ reset

1. Introduction

It has been 210 days since what can only be described as declaration of Emergency in Kashmir, on 5th August 2019: largescale arrests and detentions, suspension of all modes of communication, including landline and mobile phones, press clampdown, and lockdown of all movement. These accompanied abrogation of Article 370 of the Constitution and removal of Article 35A. Some of the restrictions have been eased in these past weeks, but life in the Valley remains harsh – with ongoing detentions; restricted communication, including Internet; press under close watch; businesses and economic activity in doldrums; education suffering, and medical services under strain. Despondency is high, especially among youth. Below is a quick update of the situation.

2. Detentions

People arrested around 5th August continue to remain mostly in detention – especially politicians, community leaders, civil society actors and the youth. Where detentions initially were informal or under minor charges, these have now been formalised, and brought under draconian regulations. Government claims approximately 5161 preventive arrests have been made in the Kashmir Valley since 4th August 2019 and that 609 persons remain under detention. Lawyers and civil society groups claim the number is closer to 8000. Initially people were only arrested under Section 107 of the Criminal Procedure Code (CrPC), but

280 The former guaranteed a degree of autonomy for the state, latter provided rights for indigenous residents of the state.


282 Section 107 in The Code Of Criminal Procedure, 1973- Security for keeping the peace in other cases.
(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, 1 with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.
(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.
Over the 6 months many arrested persons have been booked under the Public Safety Act (PSA) that allows for preventive detention without trial or charge for up to 2 years. In conversations with locals, it was noted that many people, including minors are detained in police stations every week or on days when protests are organised – in irregular forms of detentions, which are nowhere on record. Human rights groups claim, based on data accessed from J&K High Court Registry, that 662 fresh habeas corpus petitions (challenging detentions under PSA) were registered in 2019 out of whom the majority (412) were registered after 5th August, 2019. Most of those detained belong to economically poor families. They also find it difficult to access the judicial process. This is made worse by the fact that there is little trust and hope for justice from the judiciary. Both Supreme Court of India and J&K High Court have been unenthusiastic about habeas corpus applications filed by those in detention. The J&K Bar Association has been an active voice in the state standing for rights of wronged citizens. The President of the association, Mian Abdul Qayoom, is one of those detained by authorities since 5th August 2019. Application challenging his detention was dismissed by J&K High Court that claimed “a court is not a proper forum to scrutinize the merits of administrative decision to detain a person.” Former state Chief Minister, Omar Abdullah, also in detention under PSA, challenged his detention in the Supreme Court. No immediate relief was provide, and the case is yet to be decided.

3. Communication and Internet restrictions

Kashmir has experienced the world’s longest internet shutdown in a democracy. A petition challenging the shutdown in the Supreme Court delivered in August 2019, as adjudicated only in January 2020. The court recognised that right to Internet was a fundamental right (Art 19[1] [a]), but failed to provide any relief to Kashmiris who have been under communication shutdown for more than 5 months. It set a dangerous precedent by holding that “reasonable restrictions under Article 19(2) can extend to complete prohibition of speech in certain circumstances.” It also left the determination of proportionality completely to the

287 [https://frontline.thehindu.com/dispatches/article30542427.ece](https://frontline.thehindu.com/dispatches/article30542427.ece)
Executive, dangerous handout by the courts. Currently only restricted access to Internet is allowed, some 1674 ‘whitelisted’ websites are available to users, and no access to social media such as WhatsApp and Facebook allowed to common users. The Jammu and Kashmir administration on 14th January 2020 issued an order banning all social media sites. This was ostensibly to curb their misuse by “miscreants for propagating false information and rumours”. The charges under the misuse were under the draconian Unlawful Activities Prevention Act (UAPA). According to police officials, there have been no arrests directly under the cyber police’s FIR. But it has kicked into motion several arrests under FIRs filed at the district level. The online news portal Scroll.in tracked down at least five cases of arrest since February 17, all for social media and VPN use.

Press freedoms too remain suspended. Local journalists speak of extensive control by authorities of the material that is published, including scrutiny of content, occasional interrogations, as well as through leveraging of advertising revenue. There seems a concerted campaign by authorities to prevent publication of any news that might be construed antithetical to the official line.

4. Effect on business and economy

Core sectors of the J&K economy have witnessed a steep decline after the abrogation of Article 370. It is estimated that till December 2019, the economy of Kashmir lost Rs. 179 billion, which included various sub-sectors like tour operators (inbound and outbound), house boats, hotels, tourist transport, shikaras, adventure sports and other allied sectors. The manufacturing section alone suffered a loss of Rs. 25.2 billion. Kashmir Chamber of Commerce and Industry (KCCI) has stated that the present disruption has resulted in loss of hundreds of thousands of jobs. Government intervention in the horticulture sector for which Rs 80 billion was earmarked for purchase of apples has come a cropper and caused price turmoil and panic sales. The impact on saffron crop has been much worse: this year the yield is expected to be between 1/6th to 1/8th of the average production. According to reports, the apples industry in Kashmir, worth Rs. 80 billion which

291 https://thewire.in/economy/after-august-5-kashmirs-economy-has-suffered-rs-17878-crore-in-losses
contributes eight percent of J&K’s GDP, has been worst affected.293

An Industry source explained to us how this works at micro level – for small and big businesses. Immediately after 5th August, banks remained closed for over 10 days, and even after they reopened, it was only for a few days for weeks from then on. With Eid on the 12th of August, this was the peak retail season, with advance orders and large bank of stocks. But with movement and communication shut down, much of the retail activity never took off. This resulted in cash drying up. Markets remained closed and payments by businesses were not made. But Rent and electricity bills continued to accumulate. Those businesses which had taken out loans stood devastated as they did not have the means – sales – to service their loans. As a result, they have all become defaulters. According to these industry sources, 90 per cent of all business accounts in the state are under stress.294 Feeble efforts by authorities for a reconstruction package have done little ameliorate matters, it is claimed. Alongside, attempts by the authorities to attract investors from outside the state are, according to sources, likely to come a cropper, due to the security situation.295

5. Impact on education

The continuing internet blockade has severely affected college and university students. College students and research scholars, for instance, have not been able to fill the online forms for competitive exams, scholarship grants and research papers. Most of the hostels in the Kashmir University are shut indefinitely. Internet access to university libraries has been disrupted and limited to low speed now, increasing the stress levels of students. The students see this as a “deliberate policy of New Delhi” to keep them out of contention for national- and international-level competitions. The respondents also complained that with personal access to Internet services cut, they have had to queue for long hours outside district headquarters, the only government offices where public access to internet services is being provided. Besides wasting precious time, each student has had to shell out INR 100 to 200 per online submission at these offices. In any case, schools have only recently opened and teaching resumed after 6 months – resulting in big loss to students.

293 https://www.orfonline.org/research/life-in-kashmir-after-article-370-60785/
294 https://kashmirlife.net/stressed-assets-doubled-issue-44-vol-11-223101/
10. The Citizenship (Amendment) Act, 2019: Dismantling India, Imperilling South Asia

12th December 2019

1. Introduction

On 11th December 2019, Indian Parliament passed the Citizenship (Amendment) Bill 2019, (CAB) legislating far-reaching changes to India’s citizenship regime. The law, expected to be notified anytime now, makes illegal migrants in India from Pakistan, Afghanistan and Bangladesh eligible for Indian citizenship by (i) granting Hindus, Sikhs, Jains, Buddhists, Parsis (Zoroastrians) and Christians among them, those that entered India before 31st Dec 2014, amnesty, thus opening a path to their naturalisation as Indian citizens (Section 2) and (ii) relaxing for them the residence requirement for naturalisation, from 11 years to 5 years. (Section 6). Ostensibly, the law seeks to protect persecuted minorities from the region and offer them shelter in India.

In fact Citizenship (Amendment) Act 2019 (henceforth CAA), by introducing a ‘religion test’ in India’s citizenship legislation - excluding Muslims and other persecuted minorities in similar circumstance from any protection, while offering it only to the named faith groups - strikes a body blow to the basic structure of Indian constitution, specifically its secular character; is wholly arbitrary, and violates principles of equality and non-discrimination, including on FoRB principles; besides contravening international law. The amendment will have direct and immediate impact on the 1.9 million persons excluded from National Register of Citizens in (NRC) Assam. Potentially, the legislation also does harm to the named minority groups still in Afghanistan, Bangladesh and Pakistan, by making their claims to citizenship in their own home countries precarious, rendering the groups vulnerable to targeting and discrimination. Finally, by fashioning India as the home for the region’s Hindus, the legislation encourages homogenising tendencies in India, whilst undercutting the already restricted diversity in the three neighbouring countries. These developments jeopardise the wellbeing of minorities across South Asia, aggravating divides, imperilling the region. On the day the lower house of Parliament passed CAA 2019, US Commission on International Religious Freedom (USCIRF) voiced ‘serious concern’, going on to recommend sanctions against Indian leaders.296

296 USCIRF raises serious concern and eyes sanction recommendations for Citizenship (Amendment) Bill
2. The constitutional case against Citizenship (Amendment) Act, 2019

Constitutional experts have pointed to four basic flaws with CAA 2019, all centred around it being selective without justification, hence arbitrary and discriminatory:

i. Privileging religious persecution, over all forms of persecution of minorities. By limiting scope of the changes only to religious minorities from so-called Muslim-majority countries, the law disregards victims of persecution (in the region) based on ethnicity (Tamils from Sri Lanka, Rohingyas from Myanmar; Baloch from Pakistan, and Hazara from Afghanistan, among others); and language and culture (Urdu-speaker from Bangladesh and Lhostsampas from Bhutan). They are all worthy of protection.

ii. Privileging the persecution of the specified religious minority groups over other faith groups in similar circumstance. For example, Ahmadi and Shia Muslims fleeing religious persecution in Pakistan or Hazara (Shia) Muslims from Afghanistan, who are equally persecuted – data in fact shows, more – from the scope of the scheme. As would Tibetans and Uighurs from China, suffering years of racial and religious targeting. Also those persecuted because they profess no religion. Tasleema Nasir from Bangladesh or secular bloggers from that country, too would be ineligible.

iii. Privileging persecution in the three countries over that in other countries in the region. Rohingya Muslims facing extreme persecution in Myanmar, and of who, according to UNHCR, over 20,000 are in India, are not covered by this scheme, nor are Muslims in Sri Lanka increasingly feeling the heat which passed Lower House today.' https://www.uscirf.gov/news-room/press-releases-statements/uscirf-raises-serious-concerns-and-eyes-sanctions


300 Taslima Nasrin on a rebellious childhood, facing death and being a woman in Islamic Bangladesh. 12 October 2018. Readers Digest. https://www.readersdigest.co.in/features/story-storytelling-event-readers-digest-taslima-nasrin-124570

of the rising Sinhala nationalism in the country. Lhotsampas of Hindu Nepali descent in Bhutan – who have suffered one of the worst forms of persecution, with over 100,000 disenfranchised and made stateless in the 1990s - are also not covered.

iv. Finally, the privileging of those already in the country, having entered India before 31st Dec 2014, against those that came after, or indeed those still in their home countries and who might want to make use of this scheme, as a route to asylum. Research also shows that those that the law seeks to regularise to make them eligible for citizenship, might have entered India for various purposes - persecution or fear of persecution, but also for economic reasons, pilgrimage, and business trips – and then stayed on.\(^\text{302}\)

The law does not provide a definition nor a yardstick for persecution.

Introducing CAA 2019 in the lower house of Parliament, Home Minister Amit Shah refuted charges arbitrariness, by claiming that religious persecution was a valid ground for ‘reasonable classification’; and that was the basis of his proposal too.\(^\text{303}\) It is clear that the classification, rather than being rational, is arbitrary, irrational and discriminatory, designed specifically to exclude Muslim refugees from the possibility of amnesty and citizenship. Of the 1.9 million left off the Assam NRC, the named minority groups will have a pathway to Indian citizenship, while excluding Muslims. Media reports have just revealed that a figure of 700,000 is likely.\(^\text{304}\) This selective application is in contravention of international law, in particular the right to nationality “without distinction as to race, colour, or national or ethnic origin” (Article 5, International Convention on Elimination of all forms of Racial Discrimination - CERD), and against India’s Constitution which guarantees equality before the law and equal protection of the law (Article 14). It also violates rights of illegal migrants not covered to freedom to practice religion under (Article 25), Indian Constitution’s FoRB provisions that are available to non-citizens too. It is clear that since the law makes no effort to define persecution or to provide a threshold for its determination, it seeks less to offer India as a haven for persecuted minorities - a worthy cause – rather, more to create India in a


certain majoritarian image. By regularising illegal migrants of specific persuasion already in India, the legislation also serves immediate vote bank politics.

3. **Hidden agenda: Aiming for Akhand Bharat**

For long, the ruling Bharatiya Janata Party (BJP) and its parent organisation, the Rashtriya Swayamsevak Sangh (RSS), have seen India as an inherently Hindu nation, and the partition of India in 1947 into India and Pakistan, as a great Hindu tragedy. RSS sees its endgame as the consolidation of what it calls Akhand Bharat (undivided Bharat or India), that not only includes undivided India – Pakistan and Bangladesh - but also Afghanistan, as the historical Hindu land that must be reintegrated, by force if necessary. Until that vision is realised, RSS seeks to fashion India as a natural home for the region’s Hindus. BJP manifesto in 2014 promised “India shall remain a natural home for persecuted Hindus and they shall be welcome to seek refuge here.” This was driven home by Home Minister, Amit Shah, while he argued for CAA 2019 in Parliament:

Persecuted minorities have nowhere to go but India “which is their natural, civilizational and ancestral home”.

On being elected to office on the back of a landslide victory back in 2014, BJP took the first steps to realising this vision. In 2015, Government of India decreed (through an executive order), to allow Afghan, Bangladeshi and Pakistani nationals who were Hindu, Sikh, Jain, Buddhist, Parsi and Christians to stay on in India even without proper documentation, on “humanitarian considerations”. While Hindus – besides some Sikhs - were the main beneficiaries of the intended amnesty, including Christian, Jains, Parsis and Buddhists provided a fig leaf of respectability.

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305 ‘India is a Hindu Rashtra; It is non-negotiable’ RSS Chief Mohan Bhagwat. India Today, 1st October 2019. [https://indianexpress.com/article/explained/rss-akhand-bharat/](https://indianexpress.com/article/explained/rss-akhand-bharat/)


307 ‘RSS and the idea of Akhand Bharat’ Indian express. 4 Jan., 2016. [https://indianexpress.com/article/explained/rss-akhand-bharat/](https://indianexpress.com/article/explained/rss-akhand-bharat/)


couching the concession in minority protection terms. The following year, the process of granting citizenship to the specified groups was decentralised to local authorities. In July 2016, central government introduced in Parliament the Citizenship (Amendment) Bill 2016 (CAB, 2016) to make illegal migrants from the stated groups – already permitted long term residence - eligible for citizenship. BJP did not have a majority in the Rajya Sabha, upper house of Parliament, and Government failed to carry the bill through. CAB 2016 eventually lapsed in June 2019.

4. Assam NRC: Exploiting an opportunity – Furthering divides

Publication of the draft National Register of Citizens (NRC) for Assam in July 2018, and reports of the exclusion of large number of Hindus among the total 4.1 million left off the list, provided BJP an opportunity to garner support for CAA from another quarter – the eastern Assam state, which over the past years has been updating the NRC in an effort to weed out ‘illegal migrants’. NRC updation in Assam is part of a Supreme Court of India - monitored administrative process, seeking to implement the Assam Accord of 1985, that brought to an end, years of often violent unrest, centred around the ‘foreigners’ issue in that state. Not being on the draft NRC created panic for such large numbers in Assam of all faiths and ethnicities, bulk of them being Bengali-speaking Hindus and Muslims. BJP used the opportunity to package CAB 2016 – still languishing in Parliament then - as a safety net for those excluded from NRC, but only selectively for Hindus. Whilst campaigning in Assam’s Bengali Hindu-dominated Silchar district, during General Elections in April 2019, Prime Minister Narendra Modi declared that his party was committed to passing the CAB 2016, offering excluded Hindus a lifeline to citizenship. Since after the publication of the final NRC (on 31st Aug 2019), with 1.9 million excluded in the final reckoning, BJP leaders have been clearer in their messaging. Visiting Assam early in September 2019, first time since the publication of final NRC – when fears had been stoked that the bulk of the excluded were Hindis – Home Minister Shah assured that CAB had not been consigned to oblivion and would be tabled in Parliament again. He declared in the same breath that Centre intended to expel all illegal immigrants not just from

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Assam but the entire country.312

Shah then upped the ante. In October this year, at an election rally in West Bengal – which has historically hosted the highest numbers of migrants from Bangladesh and where BJP is seeking to make inroads in a state where it has historically had only a thin presence - he confided to his audience:

“I want to assure all Hindu, Sikh, Jain, Buddhist and Christian refugees that you will not be forced to leave India by the Centre. Don’t believe rumours. Before NRC, we will bring Citizenship Amendment Bill, which will ensure these people get Indian citizenship.”313

At the same public event, Shah asserted:

“each and every infiltrator in India will be shown the door”.314

Often using the term ghuspetia (intruder), Shah had, during 2019 General Election campaigning earlier in the year, described illegal migrants as termites.

“They are eating the grain that should go to the poor. They are taking our jobs.”315

Illegal migrants is a dog whistle term for BJP leaders to target Muslims. For BJP, illegal migrants are exclusively Muslim.

“The illegal Bangladeshi Muslims pose security threat to the inhabitants of the state and the country” (Dilip Ghosh, BJP State President for West Bengal, Sept. 2019) 316

Since publication of final NRC in August 2019, the 1.9 million persons excluded from the list – of all faiths and background - wait in anticipation to appeal their exclusion before Foreigners Tribunals. There has been no word from authorities when the appeals process will kick off. Rather, and dramatically, anxieties were raised many notches, especially for Muslims, when on 20th November 2019, HM Shah told the Parliament that government was planning to carry out NRC afresh in Assam, together with implementing the NRC test across India, this time.\textsuperscript{317} Confirming the shift, Assam Finance Minister, Hemanta Biswa declared that NRC in its current form – to mean, with Hindu excluded from the list - was not acceptable to Assam government.\textsuperscript{318}

Amidst this clearly deliberate attempt by the Centre and state governments to obfuscate Assam NRC, the revised CAB 2019 was passed by union cabinet on 4th December 2019. To blunt opposition to the amendment by tribal groups in Northeastern India who have voiced opposition to settling immigrants in tribal pockets, the bill provided concessions, limiting the scope of the legislation to areas with existing protective regimes for indigenous communities.\textsuperscript{319} In Assam itself, the bill has been strongly opposed, with ethnic Assamese activists claiming the amendment – by allowing (mostly Bengal-origin) Hindus excluded from NRC to be provided a backdoor entry to Indian citizenship - violates the Assam Accord meant to ‘detect and deport’ all illegal migrants.\textsuperscript{320} The BJP-led national government tried to buy off Assamese opposition by offering concessions, promising constitutional safeguards for indigenous Assamese.\textsuperscript{321} But these seem not to have worked. However, BJP carried on, and on the strength of its majority in Parliament, managed to get the bill passed. Assam and other parts of North East have since exploded in protest.\textsuperscript{322}

\begin{itemize}
\item \textsuperscript{317} https://scroll.in/article/944460/why-amit-shahs-promise-to-extend-a-pan-india-nrc-to-assam-will-not-be-easy
\item \textsuperscript{319} These include Inner Line Permit (ILP) state (Nagaland, Mizoram, parts of Arunachal Pradesh), and 6th Schedule Areas in Assam and Tripura. Manipur has also been promised ILP status.
\item \textsuperscript{322} Citizenship Amendment bill protests LIVE updates: Assam CM urges people to main calm, People defy curfew in Guwahati. 12th Dec. 2019. Indian Express. https://indianexpress.com/article/india/citizenship-amendment-bill-protests-live-updates-assam-tripura-protest-cab-6162942/
\end{itemize}
5. Citizenship (Amendment) Act 2019 and Pan-India NRC: The perfect storm!

Having tested Assam, BJP is now seeking to take its NRC dragnet to the rest of the country. Its first policy statement after returning to power in May 2019 declared “NRC would be implemented on priority in areas affected by infiltrators.” In July 2019, an official notification laid the ground for a 2-step process to prepare a National Register of Indian Citizens (NRIC) across India. Central to this exercise, to be rolled out along with the decennial Census in 2020, is “identifying persons whose citizenship is doubtful”. Information sourced through Right to Information Act (RTI) questions has revealed that no definition is provided, nor a transparent process laid out. Alongside, central government has delegated the establishment of Foreigners Tribunals in districts across the country, and started setting up detention centres in each state. In northern Uttar Pradesh state, ruled by BJP, police have been tasked to identify, “especially from slums and railway stations and outskirts of towns” foreign nationals, to check their documents, destroy fake ones, record biometrics and take action to deport them. The directive does not invoke any law for police to conduct this check, without due process, or how the deportation would take place. In Bengaluru, capital of southern Karnataka state, also ruled by BJP, police recently picked up 59 alleged illegal migrants - men, women and children - detained them illegally for over a month, and then transported them to eastern Kolkata, to be deported across the border in Bangladesh. A pan-India infrastructure to detect, detain and deport is steadily revving into action. This is causing shock waves in Muslim settlements across the country. Suicides have been reported.

CAA 2019 is the last piece of the puzzle in this new citizenship regime of


enfranchising some, and disenfranchising others. As Assam NRC experience shows, while Hindu immigrants will be offered protection of citizenship, Indian Muslims, not just ‘infiltrators’ among them, will increasingly be targeted for disenfranchisement, stripped of their nationality, sent to detention centres and rendered stateless. That this could potentially affect the entire Muslim population of India – estimated 200 million today, 14.2 per cent of the country – is a sobering thought. In the final analysis, this use of law and procedures – claiming NRC as critical to identify and deport illegal migrants (to mean Muslims), whilst fashioning CAA 2019 as a refugee protection mechanism for Hindus and other minorities, who will not be deported - is remarkable for a country which guarantees equality as its core principle.

6. Imperiling South Asia

A citizenship regime that is an open invite to all Hindus from the region to move to India, is bad news for South Asia too. It seeks to empty the rest of the countries of the region of their Hindu populations, making those countries further homogenous majorities. And by creating a cut off of 31st Dec. 2014, CAA 2019 puts at risk minorities still in those countries to their own majoritarian targeting. This it does, even as the law homogenises India itself, at the cost of India’s minorities, especially Muslims. Minority rights in South Asia – especially the countries mentioned in the legislation - has existed in a precarious balance, with a majority in one county often being minority in another. Since the end of colonial rule and Partition, minority targeting in one country has had its immediate and grim repercussions in another, on their own minorities.  Of late, small gains have been made in minority protection and promotion in the region. The recent Kartarpur corridor agreement between India and Pakistan – allowing visa-free travel for Sikh pilgrims from India to their holy sites in Pakistan - being a fine recent example. Given the centrality and size of India in the region, CAB 2019 threatens to irreparably rip apart that balance. Already, Bangladesh has expressed worries that CAB-NRC will hit “golden chapter in Delhi-Dhaka ties” ; Afghanistan has taken exception to Indian accusations of state persecution;
and Pakistan is saying that the legislation is “violating all relevant international conventions and norms”\textsuperscript{334}. The example of the other homeland for a faith community – Israel – and how that has created divides and fractures in the wider middle eastern region, once home to various Jewish communities, besides in Israel itself, with illegal Jewish settlements expanding and rights of long-standing Israeli Arab citizens denied with impunity, should be a grim reminder against this misadventure.

\textbf{7. Conclusion}

India has no domestic refugee law. It has neither signed the UN Convention on Refugees (1951) nor ratified the UN Convention Relating to the Status of Stateless Persons (1954). In the absence of these, successive governments as well as courts in India, have acted arbitrarily – opening doors to some, closing them to others. Whilst India has welcomed Tibetans, Bangladeshis and Pakistani, even Afghans, it has closed its doors to Rohingyas. On the whole, Muslim immigrants have mostly been kept at bay, as is evident from the treatment of Rohingyas, with both the government and Supreme Court going against the internationally recognised principle of non-refoulement, to direct Rohingya deportation from India.\textsuperscript{335} CAA 2019 was in the circumstance, a good opportunity to cast an inclusive and universal refugee law, had the interest of persecuted minorities been the objective. Clearly, it was far from that.

The BJP government in its pursuit of a Hindu majoritarian vision of India, is seeking to create a legal regime that disenfranchises and excludes Muslims. And by selling CAA in conjunction with Assam NRC, it has sought formally to exclude Muslims from any scheme of naturalisation, while including Hindus in, arbitrarily. With little hope for due process and justice awaiting them in Foreigners Tribunals\textsuperscript{336} - offered as a last chance for appeals against disenfranchisement - this will be the end of the road for the hundreds of thousands of Muslims left off the NRC in Assam, consigned to statelessness.


\textsuperscript{336} See Amnesty International recent report on the working of Foreigners Tribunals for that analysis. ‘Designed to Exclude: How India’s courts are allowing Foreigners Tribunals to render people stateless in Assam’. November 2019.
Having created this regime sanctioned by law, of excluding some (using NRC), while including others (with CAA 2019), and having reaped electoral dividends on the back of vote bank politics, Prime Minister Modi and Home Minister Shah are now seeking to take their apartheid experiment to the rest of India.

8. Recommendations

- Repeal CAB 2019 provisions that create a two-track discriminatory process of naturalisation for illegal migrants, based on religion.
- Conduct a fair appeals process for those excluded from Assam NRC that is monitored by international observers. For those genuinely foreigner, work with the origin country to deport and rehabilitate them in their home country, within the framework of international law and norms. Rest must be restored their Indian nationality and dignity. Release all locked up in detention centres.
- Immediately suspend pan-India NRC (NRIC) implementation, until due process and transparent procedures are devised and communicated. Contain panic among people through public awareness and confidence-building campaign.
- Devise a non-discriminatory refugee law. Ratify UN Refugee convention (1951) and UN stateless convention (1954).

31st December 2019

1. CAA 2019 and Country-wide protests

The controversial Citizenship (Amendment) Act - CAA - 2019 was signed into law on 12th December 2019, creating a patently discriminatory legislation which, on the face of the law, disadvantages Muslims and which also falls foul of India’s secular Constitution. Country-wide protests erupted immediately, first in Assam, then in university campuses in Delhi and Uttar Pradesh, followed by Karnataka, before spreading across the country. Protesters have faced restrictions to their freedom of assembly, as well as heavy-handed police response resulting in numerous injuries and deaths. 26 protesters have been reported killed in police action, all in states presently governed by the Hindu-nationalist Bharatiya Janata Party (BJP). 23 of these are Muslims. Evidence and investigation shows in many cases that these causalities have been the result of excessive use of force on the part of the police against protesters (and others caught up in events). Among those killed was an 8-year-old in Varanasi, PM Narendra Modi’s parliamentary constituency. Police have been particularly aggressive in Uttar Pradesh (UP).
engaging in what Human Rights Watch has called “Deadly Use of Force against Protesters.” This briefing by the human rights group Citizens Against Hate, provides an overview of the police crackdown against protesters in UP based on media accounts and some interviews with community members.

2. Stifling dissent

Large parts of UP, especially its Muslim concentrations in western and central districts of Muzaffarnagar, Bijnore, Meerut, Bulandshahar, Rampur, Kanpur and capital Lucknow, were put under lockdown with freedom of movement and assembly restricted by authorities since 10th Dec. 2019, having invoked Section 144 of the Criminal Procedure Code (CrPC), a colonial-era provision banning ‘unlawful assembly’ which prohibits the assembly of four or more persons as a preventive measure. This followed protests by students at the Aligarh Muslim University (AMU), in the west of the state with large Muslim majority. With fresh round of protests at AMU on 15th December – and police’s violent crackdown that left a trail of injuries and destruction – these restrictions were beefed up the following day. On 17th Dec. 2019, State authorities targeted community leaders and human rights defenders in capital Lucknow and other districts, placing several under ‘house arrest’ (See Annex I). The next day police escalated this to issuing notices to more than 3,000 persons across the state, warning them not to participate in protests against the CAA planned for Friday, 19th December, 2019. On 16th December, Internet access on mobile phones had already been suspended in 21 districts of UP. In Muzaffarnagar district - site of the 2013 mass violence against Muslims that left 57 dead and over 50,000 displaced – community leaders said mobile service was suspended only in Muslim localities, whist they were restored in the rest of the district. Broadband internet services were also terminated in entire cities within the state, including in Ghaziabad and Lucknow, the state capital. They were only restored on 28th December 2019.

3. Enforcing ‘revenge’

Where protests did take place in UP, mostly on and after 20\(^{th}\) December, police reprisals have been swift and have led to violent consequences. The police have used stun grenades to disperse protesting students in Aligarh\(^\text{352}\), shot live bullets resulting in deaths in Bijnore\(^\text{353}\), as well as ransacked homes\(^\text{354}\) and destroyed private property\(^\text{355}\) in various areas in what is reported by civilian fact finding teams as reprisal attacks\(^\text{356}\). Various videos have emerged of police directly shooting live bullets at protesters, contradicting Police claims that deaths were the result of cross-firing by protesters’ using firearms\(^\text{357}\). Other videos show a district police head shouting at Muslim protesters to “go to Pakistan”\(^\text{358}\), unleashing an old communal slur. There have also been reports of arbitrary arrests and detention of Human Rights Defenders (HRDs)\(^\text{359}\), and custodial torture of detainees\(^\text{360}\), including children from various districts in the state\(^\text{361}\). The police forces have also been arbitrarily using the criminal justice system to target protesters and HRDs, slapping false or exaggerated charges against them\(^\text{362}\). Controversially, the State Government of UP has sealed properties of those they accuse of being involved in protests, in a declared effort to seize and eventually sell these properties. The State Government holds that this is for restitution for damage to public property.

\(^{352}\) https://thewire.in/government/amu-caa-protests-up-police

\(^{353}\) https://indianexpress.com/article/india/up-caa-protests-deaths-bullet-injuries-6180302/


\(^{357}\) https://www.indiatoday.in/india/story/every-assailant-was-policeman-activists-accuse-up-police-of-assaulting-muslims-caa-stir-release-videos-1632361-2019-12-29

\(^{358}\) https://gulfnews.com/world/asia/india/caa-protests-video-shows-police-firing-at-protesters-contrary-to-up-dgp-claims-1.1577078324096


\(^{361}\) https://scroll.in/article/947178/aligarh-muslim-university-students-allege-they-were-tortured-in-police-custody-after-sunday-protests?bclid=iwAR0rm-Nr5FS59yGqTwzKS03Y6f5QWYk_rnk-2XqzKuwx8msLw2jYSMyyy

during violence accompanying protests, in acts of retribution.363
In a press note issued by UP Police on 26th December 2019, a total of 19 persons are reported to have died in the course of anti-CAA protests.364 Police sources confirmed to the media that most were from ‘firearm injuries’.365 The press note also adds that 5,558 persons were taken into ‘preventive custody’ and later released.366 Of this, 1113 were arrested in 324 First Information Reports (FIRs) filed, under various sections of the law and are now in judicial custody, pending trial.
In Bijnore, one of the worst affected districts, 11 FIRs have been registered, with 200 persons named in those. 101 persons have been arrested and charged for attempt to murder and other grievous crimes. 20 among the arrested are reported to be juveniles.367 Notably, FIRs also record involvement of another 4000 persons in the protests, without specifying their names, leaving it open for police then to book individuals arbitrarily on the strength of those ‘unnamed FIRs’. This picking up and detention of community members and HRDs is ongoing now across the state, creating a chilling effect all around. Lawyers who have travelled to the region to provide legal aid to victims have also been detained.368

Police have claimed that 256 police personnel sustained injuries in the protests. No deaths of police personnel have been reported.369

4. Enabling impunity

The deadly use of force against civilians by the UP Police has been encouraged by the State’s Chief Minister, Yogi Adityanath, who has issued public threats against protesters, of exacting ‘revenge’.370 Adityanath is a controversial BJP leader and founder of the extremist group, Hindu Yuva Vahini (Hindu Youth Militia), implicated in several attacks against Muslims in UP, before he became state Chief Minister.
in March 2017.\textsuperscript{371} There are also multiple, ongoing criminal proceedings against Adityanath which accuse him of anti-Muslim hate mongering and rioting.\textsuperscript{372} Adityanath is also known for having encouraged an official state government policy of eliminating alleged criminals, leading to a series of extra judicial killings - or ‘encounter killings’ as they are called in India - with most of those targeted being Muslim.\textsuperscript{373} In response, UN Special Rapporteurs sent a special communication to India expressing alarm in January 2019.\textsuperscript{374} In the present crackdown, district police in some areas, with support of those at the highest levels of state governance, have been reported to be directing their subordinates to deal with CAA protesters with maximum force.\textsuperscript{375} These districts saw the worst of state violence.\textsuperscript{376} There have also been reports from some areas of cadres of the Rashtriya Swayamsevak Sangh (RSS) – the Hindu extremist platform of which BJP is the political arm – working with police to targets Muslims.\textsuperscript{377}

The highest authorities in government have therefore not only failed to intervene to prevent police excess, they have fuelled communal hatred, making it easier for authorities to target Muslims. On December 14\textsuperscript{th} 2019, while students at Jamia Millia Islamia University and Aligarh Muslim University – both historically Muslim universities with large proportions of Muslim students – were being targeted by police for protesting against CAA 2019, Prime Minister Narendra Modi gave the protests a sectarian colour. During an election rally in the state of Jharkhand, he stated that those who were protesting against the CAA could be identified by the clothes they wore – a dog whistle reference to Muslims, given their use of skull caps and scarves.\textsuperscript{378} Home Minister Amit Shah has in the past months often likened Muslim ‘illegal migrants’ to termites, asking for them to be thrown into the Bay of Bengal. whilst championing the cause of Hindu ‘refugees’ in

\textsuperscript{371} \url{https://www.vice.com/en_in/article/mbxx7q/humans-of-the-hindu-yuva-yahini}
\textsuperscript{372} \url{https://www.theguardian.com/world/2017/mar/19/uttar-pradesh-yogi-adityanath-hindu-priest-chief-minister}
\textsuperscript{373} \url{https://thewire.in/rights/chronicle-crime-fiction-adityanaths-encounter-raj}
\textsuperscript{374} \url{https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24066&LangID=E}
\textsuperscript{375} \url{https://scroll.in/article/947626/why-kill-our-children-blood-and-tears-in-an-uttar-pradesh-town}
\textsuperscript{376} \url{https://scroll.in/video/947552/watch-scenes-of-destruction-in-muzaffarnagar-as-mob-attacks-muslim-neighbourhoods}
\textsuperscript{377} \url{https://scroll.in/video/947552/watch-scenes-of-destruction-in-muzaffarnagar-as-mob-attacks-muslim-neighbourhoods}
\textsuperscript{378} \url{https://thewire.in/communalism/narendra-modi-citizenship-amendment-act-protests-clothes}
India – which speaks directly to the dynamics of the CAA 2019. Faced with country-wide protests, he has remained unfazed, remarking, “there might be some difficulties along the way, but we, and our leader, have the courage”, to see it through. Senior BJP leaders have justified police firing against protesters, even those that have led to deaths. Others have, in veiled threats, warned Muslims against testing the patience of the ‘majority’ community. Others have led pro-CAA rallies where attendees have made calls including to “shoot the traitors”, in an apparent reference to Muslims and other opponents of CAA 2019. In Muzaffarnagar, the site of some of the worst reprisals by police, multiple media accounts point a finger at a local BJP MP, Sanjiv Baliyan, for encouraging violence against protesters. Notably, Baliyan has also been accused of contributing to mass violence in Muzaffarnagar in 2013. There are no reports of any criminal proceedings having been initiated against these persons.

5. Courts failing to come to the relief of victims

Higher courts too have failed to act to protect citizens from executive excess. In response to a series of challenges against the constitutionality of the CAA 2019, the Supreme Court of India not only refused to stay the operation of the law until it heard the case, it also did not show any urgency in arranging a hearing. This has now been fixed for 22nd January 2020, which is 40 days from when the writs were registered, which in turn has contributed to sustained protests across the country. Supreme Court has also refused to hear pleas against excessive police force in the case of Jamia Millia University in Delhi, the site of one of the earliest police crackdowns against protesters. The Delhi High Court bench that did register the case also did not respond with urgency, deferring the hearing to 4th

380 https://www.ft.com/content/776db6a2-21f5-11ea-92da-f0c92e957a96
385 https://www.indianexpress.com/article/opinion/columns/CAA-citizenship-amendment-act-supreme-court-constitution-of-india-6181772/?fbclid=IwAR0GzxbGVBiZoTHPPUomsQndumhpAm2X28bxejCI7z8PiHat_4N2oNxFwC
February 2020.\textsuperscript{386} Other references to higher courts too have failed to elicit urgent remedial action. Even habeas corpus writs in UP state High Court concerning HRDs in police detention appear to be going through normal procedure\textsuperscript{387}, as are pleas on excessive force used against students protesting at Aligarh Muslim University.\textsuperscript{388} Pleas in the UP High Court against mobile service shut down have also been rejected.\textsuperscript{389}

6. Conclusion

A day after CAA 2019 was voted into law, the Office of the United Nations High Commissioner for Human Rights (OHCHR) condemned the move, by calling the legislation “discriminatory”.\textsuperscript{390} Earlier, just after the lower house of Indian Parliament passed the Bill, US Commission on International Religious Freedom (USCIRF) voiced ‘serious concern’ at the ‘discriminatory piece of legislation’, going on to recommend sanctions against Indian leaders.\textsuperscript{391} The discriminatory application of naturalisation provisions of CAA 2019 are in contravention of international law, in particular the right to nationality “without distinction as to race, colour, or national or ethnic origin” (Article 5, International Convention on Elimination of all forms of Racial Discrimination - CERD), and against India’s Constitution which guarantees equality before the law and equal protection of the law (Article 14).

Restrictions imposed on persons protesting against CAA 2019, is suspension of the fundamental rights to freedom of speech and expression and to peaceful assembly, guaranteed in Article 19 of Indian Constitution. The targeting of protestors amounts to disproportionate use of force, per Model Rules on the Use of Force by the Police against Unlawful Crowds (Adopted by the Inspectors General of Police Conference, 1964) and Police Manuals. They also violate the UN Basic Principles on the Use of Force and Firearm by Law enforcement Officials. The UN has raised concerns about casualties and injuries during anti-CAA

\begin{itemize}
  \item \textsuperscript{386} https://scroll.in/latest/947303/jamia-violence-delhi-high-court-denies-students-interim-protection-from-arrest-lawyers-say-shame
  \item \textsuperscript{387} https://www.livelaw.in/news-updates/caa-protests-allahabad-hc-calls-for-documents-relating-to-arrest-of-advocate-md-shoaib-read-order-151012
  \item \textsuperscript{389} https://scroll.in/article/947770/supreme-court-to-tiz-hazari-how-the-judiciary-responded-to-caa-protests-and-police-action
  \item \textsuperscript{390} https://news.un.org/en/story/2019/12/1053511
  \item \textsuperscript{391} https://www.uscirf.gov/news-room/press-releases-statements/uscirf-raises-serious-concerns-and-eyes-sanctions
\end{itemize}
protests, and called on authorities “to respect the right to peaceful assembly, and to abide by international norms and standards on the use of force when responding to protests.”

Recently, the Organisation of Islamic Countries (OIC) called on India to “ensure the safety of Muslim minority”, in the context of the legislating of CAA 2019 and the targeting of dissent against it.

7. Recommendations

To the Government of India:

- Issue immediate guidance to the Uttar Pradesh Police to avoid the continued use of excessive force against protesters.
- Free detainees held in connection with the protests, where there is no prima facie case of wrongdoing, including HRDs, and wrongfully detained persons.
- Remove restrictions on freedoms, including Internet and mobile as well as assembly.
- Initiate criminal proceedings against officials involved in killing and grievous injuries to protestors in a timely manner.
- Investigate, and where appropriate, use criminal or disciplinary procedures against officials and politicians who have incited violence against members of any religious community on the basis of their faith or heritage.
- Provide urgent medical attention and compensation to protesters who have suffered violence.
- Conduct an independent inquiry into the police response to anti-CAA protests in Uttar Pradesh led by a judge of the High Court, to identify facts and establish accountability. This report which must be prepared within a short and finite timeframe, must be made public, and until then all criminal proceedings against individuals and HRDs initiated by the state administration must be withheld.
- Comply with UN Basic Principles on the Use of Force and Firearm by Law enforcement officials.

To the international community:

- Ask India to abide by international norms on democratic protest, including its commitment to ICCPR principles.

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393 [https://thewire.in/rights/oic-express-concerns-about-indian-muslims-safety](https://thewire.in/rights/oic-express-concerns-about-indian-muslims-safety)
- Ask India to conduct an independent enquiry into Police action against anti-CAA protesters, to determine whether there was excess and disproportionate use of force, and share the findings, along with an action taken report on the findings, within a specified timeframe.
  - Ask India to provide a detailed district-wise report of (i) protesters killed and injured; (ii) persons arrested and proceeded against (including detained and then released immediately), broken down by age and date of arrest, and criminal charges against them; (iii) shops and private property seized to be used to pay for public property damaged; (iv) other forms of violations that police crackdown has taken.
- Monitor targeting and excesses against religious minorities, especially Muslims in Uttar Pradesh and India, more closely.
- Conduct special hearings on the human rights situation of Muslims and other religious minorities in India.
12. Justice too Far: Targeted violence and the working of the criminal justice system

January 2020

1. Introduction

In September 2017, Citizens Against Hate published ‘Lynching Without End’ a report of fact finding of 24 incidents of religiously-motivated, mostly cow-related, vigilante violence against Muslims resulting in 34 murders and 2 rape cases, almost all having occurred 2015 onwards. The vast majority of these incidents were reported from the states of Haryana, Jharkhand, and western Uttar Pradesh, the rest in Assam, Gujarat, Rajasthan, and West Bengal. The report was an attempt to shed light on the post-violence actions of law enforcement and prosecution agencies – in the aftermath of the violence - and to document the working of the criminal justice system for victims of hate crimes. The findings of the report revealed serious failures on the part of the police and prosecution agencies - both of omissions and commissions - with regard to the victims. From registration of First Information Reports (FIRs) to the investigation of the crime and taking action against the perpetrators, the role played by the police was marked by bias and a poor commitment to uphold the rule of law.

This briefing summarises findings of trial monitoring conducted by Citizens Against Hate in the period December 2019 – January 2020 (well over two years after the initial report) - select cases in an attempt to look further into how the trials were conducted, to shed light on access to justice for victims and their families. The findings are not encouraging --- They speak to the weak working of the justice system in India generally, especially poor for marginalised groups, particularly so in hate crime cases.

2. Research and methodology

For the purpose of this review, we chose 9 out of the initial 24 incidents, that together led to the murder of 12 Muslim men in the States of Haryana, Rajasthan and Uttar Pradesh. This was a combination of old cases (before the publication of LWE), and new, those more recent, all cases CAH has been engaged with from the beginning, since publication of LWE, supporting families with rehabilitation and helping them access justice, working with their lawyers. We took 6 of the former: (i) deceased: Tehseen, Yamunanagar, Haryana (ii) Mustain Abbas, Kurukshetra, Haryana (iii) Ghulam Mohammad, Bulandhshar, Uttar Pradesh (iv) Pehlu Khan Alwar, Rajasthan (v) Farid and Sher Singh, Nuh, Haryana (vi) Anas Qureshi, Arif Qureshi and Nazim, Dadri, Uttar Pradesh. We also took 3 of the recent, viz. (i) Akbar Khan, (ii) Umar Khan, both Alwar district of Rajasthan and (iii) Shahrukh, Bareilley, Uttar Pradesh. Of these three, 2, Akbar Khan's and Shahrukh's murder occurred after the Supreme Court of India laid down preventive, remedial and punitive measures/guidelines to prevent vigilantism in the name of cow protection. (Tehseen S. Poonawalla vs. Union of India & Ors. [W.P (Civil) 754/2016] on July 17th 2018). In this analysis, we wanted also to explore the impact of the Supreme Court guidelines on the investigation and prosecution of lynching cases.

With the help of the lawyers, legal documents pertaining to each of the 9 cases were accessed by the CAH Team. Certified copies of the documents submitted by the police to the court which form a part of the case file, were taken from the court and analysed. The following legal documents were looked at for each case for the purpose of this analysis - FIR\textsuperscript{395}, Post Mortem Report\textsuperscript{396}, General Case Diary\textsuperscript{397}, Chargesheet\textsuperscript{398}, Court Orders, depositions of witnesses before the Court and representations sent by the family to various authorities.

\textsuperscript{395} First Information Report (FIR) means an information recorded by a police officer given either by the aggrieved person or any other person to the commission of an alleged offence. On the basis of first information report, the police commences its investigation.

\textsuperscript{396} Post Mortem (PM) report is an examination and dissection of a dead body to determine cause of death

\textsuperscript{397} Record kept by Police Station of all events

\textsuperscript{398} A chargesheet is filed after the FIR. It is a formal police record showing names of each person brought into custody, the nature of the accusations, and the identity of the accusers.
A. Preventive Measures:
1. Appoint a senior police officer as Nodal Officer to prevent incidents of mob violence and lynching and for intelligence about the people who are likely to commit such crime.
2. Identify Districts, sub-divisions and villages with high incidence of lynching / vigilantism
3. Nodal officer to hold regular meetings to identify the mob violence or lynching or cow vigilantism and take steps to prevent them.
4. Government of India to take initiative to identify the measures to prevent mob lynching and violence.
5. The police to register FIR u/s 153 A of IPC against persons disseminating irresponsible messages or videos.

B. Remedial Measures:
1. Police to file FIR without any undue delay under the relevant provisions of IPC.
2. Investigation to be personally monitored by Nodal Officer. Charge sheet to be filed within the statutory period.
3. State government to form a victim compensation scheme u/s 357 CrPC.
4. Cases of lynching and mob violence to be tried by designated court/ Fast track courts in each district. Such courts shall hold trial on the daily basis and be concluded within 6 months.
5. To set a stern example in the cases of mob violence and lynching, upon conviction of the accused person, the trial court must ordinarily award maximum sentence as provided for various offenses under the provision of IPC
6. The courts trying the cases of mob violence and lynching shall take steps for the protection of victims.
7. Victims to be given notice of any proceedings and he/ she to be heard at the trial – all stages. Have the right to file written submissions on conviction and acquittal or sentencing.
8. The victims or the kin of deceased shall receive legal aid and shall have the right to choose her/him own advocate form the legal service authorities act 1987.

C. Punitive Measures:
1. Any act of police and other officers coming in the way of effective implementation of these orders, shall be considered as an act of deliberate negligence. Appropriate departmental proceedings within 6 months.
2. State government must take disciplinary action against the concerned officials if officials found not preventing incidence, or apprehending and taking punitive action against culprits.

### Box 1. Tehseen Poonawala Writ Petition

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<tr>
<th>3. Trends in the investigation and prosecution of hate crimes</th>
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<tr>
<td><strong>3.1 Registration of FIRs and ‘cross-cases’ against victims:</strong></td>
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<td>An analysis of the cases shows that the police is reluctant to register FIRs for murder of victims based on the family’s version. Attempts by victim families to get FIRs registered has not always been successful. In the case of Farid, Sher Singh and Toufiq, inspite of multiple letters sent to higher authorities for registration of FIR against the culprits responsible for the murders, an FIR to that effect was never registered. Where families have been successful in getting FIRs registered, the same has been done only after sufficient public outrage and after a long delay which is left unexplained in the FIR. This is taken advantage of by the lawyers of the accused during prosecution. In the case of triple murder of Anas Qureshi, Arif Qureshi and Nazim (Gautam Budhnagar), the family’s version was recorded in an FIR by the police after a delay of 6 days. In the case of Mustain Abbas (Kurukshtetra, an FIR u/s 302 IPC was registered only after the intervention of the High Court of Punjab &amp; Haryana. In Shahrukh’s case (Bareilley), an FIR was registered u/s 302 IPC against his friends who were accompanying Shahrukh at the time of the incident.</td>
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Other than delay, there are other discrepancies noticed in the FIRs which are registered based on the statement of family members such as not invoking
appropriate sections of the Indian Penal Code against the accused for conspiracy (S. 120-B IPC); attempt to murder (S. 307 IPC); destruction of evidence (S. 201 IPC); voluntarily causing grievous hurt by dangerous weapons or means (S. 326 IPC); and dacoity (S. 391 IPC). It has also been noticed that the police routinely invoke charges for lesser crimes in the FIRs, such as wrongful restraint (S. 341 IPC) and causing simple hurt (S. 323 IPC), which entail smaller punishments.

In its place, police has been quick to register FIRs against victims and eyewitness – a phenomenon called ‘cross cases’. Of the 9 cases analysed, in 8 cases, the police immediately registered an FIR against the victims and witnesses present with the victim, under the provisions of state prevention of cow slaughter legislations. Typically, Police use sections penalising the slaughter of bovine animals, causing injury and hurt to bovine animals and export of bovine animals outside the State for the purpose of slaughter in these FIRs. As explained later in this report, cross cases filed against eye-witnesses of mob violence under the provisions of cow slaughter prevention legislations are used as a tactic to intimidate these witnesses of murder and to ensure that they do not depose before the Court. The only case where an FIR has not been registered against the victim is in the case of Ghulam Mohammad where the case did not pertain to smuggling or slaughter of cows. This trend also speaks to another key element in all these cases that as long as prevention of cow slaughter legislations are present, police will continue to be pulled in two directions - concern for cow protection vs vigilantism by private parties, while some of these cases end up in deaths.

3.2 Shoddy investigation by police

An analysis of the cases show that the police have deliberately conducted botched up and shoddy investigations in these cases without adherence to the process of law. For instance in the case of Pehlu Khan and Ghulam Mohammad, police exonerated all the named-accused, based on dubious testimonies. In all cases, police failed to arrest any attackers from the crime scene. In Akbar’s case no charges were filed against Naval Kishore, one of the main conspirators of the crime and a local politician, Gyan Dev Ahuja, who had openly stated on television that he knew how the Hindu Vahini group had attacked the victim and that they would continue to do the same unless cow slaughter does not stop. Both belong to the ruling Bharatiya Janata Party (BJP), that was also the ruling party in the state of Rajasthan, at the time of the incident. In Akbar’s case, there was also a delay in providing medical aid to Akbar who was grievously
injured. Akbar, on being attacked, was first taken to the police station and was only taken to hospital when his condition became very critical. He was declared dead by the time he reached the hospital. In Shahrukh’s case, police had initially refused to include the family in the investigation and take their statements. It was only after local pressure was mounted that police took the family’s statements. In all the cases analysed, the police failed to contest bail applications by the perpetrators, leading to the accused getting bail. In none of the cases that was analysed, victim’s lawyer moved any application for cancellation of bail of the accused. This is partly because the victim’s family are mostly uneducated and hence not aware about the legal proceedings and mostly, because the lawyers representing them do not inform them about such legal provisions. This trend also highlights the failures of the District Legal Services Authorities entrusted to provide free and effective representation to people.

Pehlu Khan’s is the only case that has been ruled so far. An acquittal has been obtained. The judgement of the session court, provided a damning account of the botched up and weak investigation conducted by the Police, and which led to its ruling acquittal. The acquittal was a direct result of deliberate and prejudiced investigation by the police, and wilfull neglect of rule of law. The Court in its judgment had pointed out the following instances where the police failed to investigate the case leading to acquittals:

- The Dying declaration of Pehlu Khan was not attested by the doctor approving the patient to be fit for statements. No affidavit was also given by the then posted doctor for the same. (It was the duty of the investigating officer and the nodal officer to ensure that all aspects of investigation and collection of evidence were done as per requirement of law)
- There was delay of 16 hours in submission of the statement of Pehlu Khan by the Investigating Officer (IO) to the police station. The statement was recorded on 1.04.2017 at 11:50 am but submitted on 02.04.2017 at 03:54 pm.
- The arrest of the accused(s) were made on the basis of the video given by the informant which was converted to Compact Disk (CD). It did not indicate any date and timing of the recording. It also did not disclose the medium of transfer of video to the IO. Even the phone from which the video was made not seized. These are all aspects that show that State Officials, Nodal Officer and Investigating Officer did not take due steps to ensure proper investigation.
- The device from which the informant shot the second video was never produced before the court. The same was not seized by the police officer.
• The IO never produced certificate under Section 65-B of the Evidence Act, 1872 for supporting electronic records including photos and videos that were collected while the accused were lynching the deceased.
• The electronic evidence was neither sealed, stamped nor were sent to the FSL which weakens the most relevant evidence against the accused by questionable credibility of such evidence.
• No statement was recorded with respect to the electronic record. It is a settled principle of law that such electronic evidence shall be accepted only if the witness gives a specific verbal declaration of the same.

The Supreme Court had held in Tehseen Poonawala vs Union of India that the investigation lynching/vigilante violence offences shall be personally monitored by the Nodal Officer who shall be duty-bound to ensure that the investigation is carried out effectively and the charge-sheet in such cases is filed within the statutory period from the date of registration of the FIR or arrest of the accused, as the case may be. However, there is little to show that adequate efforts have been made by the police to conduct diligent and speedy investigation in such cases.

3.3 Half-hearted prosecution of cases

Criminal trial begins with the filing of ‘chargesheet’ before a Magistrate by the police officer investigating the case. The Chargesheet contains the details of the investigation conducted by the police, the evidences that have been collected and based on the investigation, the charges that have been made out against the accused persons. As highlighted above, deliberate registration of FIRs against the accused under offences with lesser punishments, failure to collect relevant evidence and deliberate shoddy investigation invariably leads to filing of weak chargesheets and acquittals by the court.

Out of the 9 cases, chargesheets have been filed only in six cases, despite the passage of at least a year and half from the last incident (Shahrurk, Bareilley). In none of these cases, charges for heinous crimes that occurred during the lynching, such as conspiracy (S. 120-B IPC), grievous hurt by dangerous weapons (S. 326 IPC), dacoity (S. 391 IPC), Criminal intimidation (S. 506 IPC), have been brought against any of the accused persons. In the case of triple murder of Anas Qureshi, Arif Qureshi and Nazim, after investigating the FIR filed by the victim families, the police instead of a chargesheet, filed a Final Report for closing the

case before the Magistrate. It is pertinent to note that the FIR was not filed for murder (S. 302 IPC) but for a lesser offence of culpable homicide not amounting to murder (S. 304 IPC). The police have stated in the Final Report (FR) submitted before the Magistrate that during the investigation 73 people from the village had filed affidavits stating that the villagers had caught cow smugglers (the deceased victims) who were attacked by the villagers in self-defence, and were later handed over to the police on the basis of which an FIR was registered against the deceased victims. The affidavit also states that similar incidences of cow smuggling have taken place in the area which were reported to the police. Interestingly, the Magistrate accepted the FR filed by the police on these grounds and closed the case. The case of Mustain Abbas also stands out as the investigation of the case was transferred to the Central Bureau of Investigation (CBI) by the High Court of Punjab & Haryana on 9th May 2016, the CBI registered fresh FIRs in the case on 23rd May 2016, however till date the investigation is ongoing and the Chargesheet has not been submitted by the CBI to the court.

Once the Chargesheet is filed and the case committed to the sessions court, charges are framed against the accused by the court and arguments are heard from both sides. It is interesting to note that in none of these cases, the Public Prosecutor (PP) has argued for the accused to be tried under graver offences, a glaring lapse on the part of the prosecution agency. Further such as in the case of Akbar Khan (Alwar), the main conspirators of the crime, Naval Kishore and Gyan Dev Ahuja were not arraigned as accused and no charges were brought against them, inspite of eye-witnesses naming Naval Kishore as one of the main conspirators and new evidence coming to the fore of the involvement of Gyan Dev. Interestingly the police had made Naval Kishore a witness in the chargesheet. Later applications were filed by the victim’s lawyer in the court to further investigate the role of the two accused u/s 173(8) CrPC which has not seen any further developments. The case is currently pending in the Sessions Court in Alwar.

3.4 Witnesses turning hostile: Role of ‘cross cases’

As mentioned, a pattern noticed in these cases is the presence of an FIR filed against the eye witnesses of the crime of murder. These FIRs, also known as ‘cross cases’ serve the purpose of intimidating the eye witnesses so that they do not give their testimony or identify the accused in the murder trial. A pattern of eye witnesses turning hostile in court has been observed in the cases of Tehsin (Yamunanagar); Farid, Sher Singh and Toufiq (Faridabad); Pehlu Khan (Alwar) and
Shahrukh (Bareilley). In Tehsin’s case, his co-travelers who were eye witnesses and were present at the scene of crime refused to identify the accused persons and stated that they had no information about the said crime. An FIR for illegal transportation of ox had been filed against them. In the case of Farid, Sher Singh and Toufiq, while Farid and Sher Singh were killed, Toufiq escaped but sustained major injuries and his leg had to be amputated. An FIR was filed against the victims for smuggling cows and Toufiq was arrested, released on bail and has now been declared to be a Proclaimed Offender in the case. Being named in the FIR, he is not ready to support the case of Farid and Sher Singh, and efforts by the two families to have him support application of registration of an FIR against murder culprits and the police. In the case of Shahrukh, victim’s friends who were present at time of his murder, have been made the main accused in the murder trial whereas in the case of Pehlu Khan, key witnesses who gave videos and developed photos of the crime scene and were also witnesses to the recovery of weapons from the accused, turned hostile leading to the acquittal of the accused.

3.5 No protection provided to victim’s family and witnesses

Several survivor families and witnesses have been threatened by the accused in the course of the trial. In none of the cases, inspite of courts being made aware of threats, no orders for protection have been issued. The cases of Pehlu Khan (Alwar, Rajasthan), where the victim’s son was attacked when he was on his way to the trial court for a hearing and Ghulam Mohammad (Bulandshar, UP), where the family had to relocate to another city due to fear of reprisal, bear testimony to the threats faced by victim families in their search for justice. The family and witnesses in Pehlu Khan’s case were threatened while they were on their way to depose before a local court in Behror. According to the Supreme Court guidelines, it is the duty of the Station House Officer, in whose police station such FIR is registered, to intimate the Nodal Officer in the district who shall, in turn, ensure that there is no further harassment of the family members of the victim(s). Sadly, such appreciable efforts have not been made in any case to protect the family of the victims. Rather the families often have been exposed to the deadly threats by the accused to not testify in court.

3.6 Long and delayed trials

The guidelines issued by the Supreme Court in the case of Tehseen Poonawalla vs. Union of India state categorically that the cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts, with the case
being heard on a day to day basis.\textsuperscript{400} The Court further held that the trial shall preferably be concluded within six months from the date of taking cognizance and further stated that this direction shall apply to even pending cases and that it shall be the duty of the State Governments and the Nodal Officers in particular to see that the prosecuting agency strictly carries out its role in appropriate furtherance of the trial. In none of the 9 cases analysed, the prosecution agency has moved any applications before a court for appointment of a fast track court or for hearing the case on a day to day basis. In Mustain Abbas’s case, the CBI which was handed over the investigation of the case in May 2016 has not yet filed the Chargesheet after a lapse of three and a half years.

4. Conviction and acquittal in cases

4.1 Weak investigation and prosecution leading to acquittals

In criminal cases, the prosecution must prove beyond any reasonable doubt that the accused committed the crime and the court must be convinced that no other logical explanation can be derived from the facts except that the crime was committed by the accused. The Prosecution agencies have, in the cases under review, failed miserably to meet this legal standard of proof to validate a criminal conviction in these cases of religiously motivated vigilante violence. Shoddy investigation of cases, marred by deliberate omissions and commissions by the police and prosecution have led to the courts acquitting the accused or convicting them under lesser offences with a few years of imprisonment. Out of the 9 cases analysed, only in two cases have final judgements been passed by the Sessions Courts – Tahsin (Yamunagar) and Pehlu Khan (Alwar).

In Tahsin’s case, the Sessions Court of Yamuna Nagar District, Haryana convicted Subhash Chand for culpable homicide not amounting to murder (S. 304 Part II IPC) and acquitted 3 other accused due to lack of evidence. Subhash Chand was sentenced to undergo rigorous imprisonment of 5 years and fine of Rs. 10,000/- u/s 304 Part II IPC and rigorous imprisonment of 3 years and fine of Rs. 5000/- u/s 201 IPC, the punishments running concurrently. At the end of the trial which was concluded within 10 months of the incident, the Court held that even though the prosecution has been able to prove the presence of accused Subhash Chand at the scene of occurrence and the complete chain of circumstances with the opinion of the doctors, it cannot be ruled out that the injury on Tahsin’s

\textsuperscript{400} Supreme Court WP 754 of 2016, order dated 17th July 2018, Para 40, Remedial Measure sub (v).
head was inflicted by the danda (rod) recovered from the accused. The Court therefore held that the prosecution was not able to prove that the accused had an intention or motive to commit Tahsin’s murder, and only wanted to apprehend him to prevent slaughtering of cows and that he had inflicted an injury on Tahsin to teach him a lesson. On these grounds, conviction was ordered for the offence of culpable homicide not amounting to murder (S. 304) instead of the stringent offence of murder (S. 302). In the case of Pehlu Khan, the court acquitted all the six accused. After going through the evidence presented by the prosecution, the court held that due to shoddy investigation and casual approach of the police, serious deficiencies have been left in the case, due to which the alleged offences against the accused persons cannot be considered proven beyond any reasonable doubt.

4.2 Appealing against trial court judgments

In Tehsin’s case, the State of Haryana did not prefer any appeal to the High Court against the acquittal of the three accused persons and for the enhancement of sentence of the convicted accused. This shows the attitude and seriousness of the State Government in prosecuting heinous crimes of religiously-motivated mob violence. The victim’s family had to hire a personal lawyer and file an appeal against the judgement in the High Court of Punjab & Haryana u/s 372 read with S 378 CrPC. The appeal is currently pending in the High Court. In Pehlu’s case, after much public outrage the State Government filed appeal against the acquittal and another appeal has been filed by the victim’s family which are both currently pending before the Rajasthan High Court.

4.3 Compensation for victim families

Except for the case of Akbar, in none of the cases under review has any compensation been given to victim families by Governments. Akbar, being a resident of Haryana, the Haryana Government has paid a compensation of Rs. 3 Lakhs to Akbar’s family, however no compensation has been offered by the State of Rajasthan where the incident leading to Akbar’s murder took place. Supreme Court had in Tehseen Poonawala Vs UoI directed State Governments to prepare a lynching/mob violence victim compensation scheme, in the light of the provisions of Section 357-A CrPC, within one month from the date of its judgment.\textsuperscript{401} The Court had further stated that in the said scheme for computation

\textsuperscript{401} Supreme Court WP 754 of 2016, order dated 17th July 2018, Para 40, Remedial Measure, sub (iv).
of compensation, the State Governments should give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses. It also asked for the scheme to include provisions for interim relief to be paid to the victim(s) family. Clearly, even the compensation paid to Akbar’s family does not meet the progressive criteria for compensation set by the SC.

In the same orders, Supreme Court had directed for provision of legal aid to victims\(^402\), and for families to be kept informed of the progress of prosecution.\(^403\) In none of the cases have authorities offered legal aid to victims, either through the State Legal Services Authority or otherwise. In most cases, the families are not aware about the provisions of legal aid and are also not informed about the same by the police or any other authorities.

5. Question of accountability

An analysis of the persistence of cow vigilante violence in the country, and the progress of criminal proceedings in the cases under review proves that the directions of the Supreme Court of India against vigilante violence, have – regrettably - not had much effect in terms of justice for victims and accountability for perpetrators. In fact, the murders of Akbar and Shahrukh took place in the months of July and August 2018, immediately after the Supreme Court judgment, however, the role played by the police and the progress of the investigation do not inspire much confidence. The Supreme court had, in the same orders, asked for designating a senior police officer as Nodal Officer in each of the affected districts; while also noting that any police officer found not complying with the guidelines to prevent, investigate and facilitate expeditious trial in mob violence / lynching cases, shall be construed to be deliberately negligent. It had directed competent authorities to take appropriate action against such errant officers, preferably within 6 months. Despite these clear directions, and evidence of botched up investigation by police officers, no punitive action has been initiated against any police officer, as well as Nodal Officers, responsible for ensuring prevention, investigation and expeditious trial in mob violence / lynching cases. Pehlu Khan’s case is an apt example of how despite the SC’s directions, no punitive action has been taken to establish accountability of officials.

\(^{402}\) Supreme Court WP 754 of 2016, order dated 17th July 2018, Para 40, Remedial Measure, sub (ix).
\(^{403}\) Supreme Court WP 754 of 2016, order dated 17th July 2018, Para 40, Remedial Measure, sub (viii).
An analysis of the cases highlights the prejudiced, deliberate and negligent attitude of the police, in the form of shoddy investigations, resulting in acquittal of the accused by the court. In Akbar’s case there are allegations of the police assaulting Akbar while taking him to the police station and deliberately denying him immediate first aid. This delay caused his death. In Pehlu Khan’s case the trial court has categorically held that the shoddy investigation conducted by the Investigating Officers led to the acquittal of the accused. The role played by the police is succinctly described by the High Court of Punjab & Haryana in the case of Mustain Abbas which observed that the members of the Gau Rakshak dal were involved in illegal activities, with the connivance of the police and local administration. The Court held as follows:

"what meets the eye is that certainly an incident during the intervening night of 5th and 6th March, 2016 has taken place in the area/jurisdiction of Police Station Shahbad, District Kurukshetra, in which so called vigilante group so constituted with the backing of political bosses and senior functionaries governing the State including police under the name and style of Gau Raksha Dal has sought to take law in its own hands. The local administration, be it the police or otherwise, by their muteness and connivance are allowing unleashing terror upon the persons carrying on such a trade in animals. It is not out of place to remark here that it has also come to the notice of this Court on earlier occasions that such like groups are bent upon circumventing law and fleecing poor persons who are ferrying their animals, be it for any personal/domestic use or otherwise. This is not the first instance that has come to the notice of this Court in the State of Haryana which is abound by such incidents where the State, which is supposed to follow rule of law and to give good governance, is looking the other way round."

On the role played by the senior police officers and district administration, the Court had observed:

“The indolent attitude of the senior police officers on report being lodged is in itself suggestive of the role of police in this episode and apparently even the District Magistrate has failed to perform his duties. The mere assumption that the occupants of the vehicle were committing cruelty to animals by mere transporting them is wholly unjustified as Article 21 provides right to pursue and carry on a legitimate occupation. Thus, such a restraint and by

404 Punjab & Haryana High Court WP.
such a vigilant group which has no legal backing and authority, that too when a person is doing so within social order, this Court would not hesitate to hold that it is duty bound to act into the matter...

As has been conceded by the State that they have registered an FIR pertaining to this incident but nothing worth to convince this Court about fruitful results into this disappearance has come forth and rather from this stand, it elicits that there is a feigned attempt under this FIR to wash off the hands of such vigilante groups having backing of the local police and therefore, this Court has every apprehension that the local police would not only circumvent the law but would also not carry on fair and impartial investigation which this Court wants them to do... Having regard to the fact that even representation of the petitioner to the Superintendent of Police of the District has not met with any response apparently reflects that even the senior functionaries of the police are hand-in-glove with such vigilante group, obviously to achieve the sinister design and pursuing a definite agenda and it appears that the local police may not carry on the investigations in the right earnest...”

6. Conclusion

The analysis of cases has confirmed the past trend of consistent and systemic failure of the criminal justice system. Access to justice for families of those killed in religiously motivated vigilante attacks is an uphill task, compounded by the fact that these hate crimes are perpetrated by groups and individuals with strong networks and political support behind them. Further, the victim families are all socio-economically marginalised, and hence unable to sustain the long road to justice. Across all these cases, investigation has been deliberately slow and laboured, evidence has not been gathered systematically and scientifically, and in most cases, is influenced by political and social biases.

This is despite Supreme Court having issued specific directions for speedy investigation and prosecution of the cases, besides for compensation among others, to affected families. As with other such orders, want of monitoring of the implementation of the directions has meant that states take little interest, and there is little compliance. Since the last hearing in the said case (WP 754 of 2016) on 24th September 2018, no further hearing has taken place, hence little account of compliance by states of the directions. Civil society groups have attempted to push authorities – using the SC directions – to act, but there has been little traction. Alongside, accused in prison have been getting bails, whilst victim families suffer
in silence, knowing their fight for justice is long and without a definite end.

The conclusions of this report are the same as the last one – that unless drivers of hate crime are addressed, there is little hope for justice, both for survivors families and for justice, rule of law and inter-community relations in the country.
13. Courts amid Majoritarian Upsurge: Protector of citizen’s rights?

February 2020

1. Introduction

In any vibrant democracy, it is the judiciary that is entrusted with the responsibility of ensuring that the other organs of the state operate within the confines of the law. “The judiciary must protect the citizen against (the) violation of his constitutional or legal rights, and it must stand between the citizen and the state as a bulwark against executive excesses, and misuse or abuse of power by the executive,” the Supreme Court (SC) of India had noted once. 405 Recently, however, India’s judicial institutions, led by the same SC, have been accused of functioning in a manner that has often not been able to protect the citizen from violation of her constitutional and legal rights. A look at some of the courts’ recent pronouncements reveals that the criticism is not unwarranted. In a context when the ruling dispensation is relentlessly targeting rights and freedoms of religious minorities – especially Muslims – this refusal of the court to act as bulwark against executive excess, means the violation of the constitutional and legal rights of a section of the nation’s population go unchecked. This does not bode well for the trust that minorities have in the majesty of the courts. This short note examines how the higher courts in India - Supreme Court mostly as well as state High Courts - have dealt with questions concerning constitutional and legal rights of religious minorities in the recent past, drawing on a few topical case studies.

2. The Supreme Court and updation of Assam NRC406

The harbinger of the current turmoil over citizenship enveloping the country, the National Register of Citizens (NRC) updation process in the state of Assam, was ordered and closely overseen by the Supreme Court. Under the Court’s watch, what was originally intended as an attempt to preserve Assam’s ethno-linguistic integrity was allowed to evolve into a tool to target the region’s linguistic and

405 C Ravichandran Iyer vs Justice A M Bhattacharjee [1995 SCC (5) 45]
406 For more, see the ‘National Register of Citizens in Assam’ section of this compendium.
ethnic minorities. The oversight of the judiciary over an administrative exercise has resulted in a situation where, according to legal experts, it is impossible to judicially challenge even foundational questions about the NRC.\textsuperscript{407} The Court’s reluctance to get involved in removing the NRC’s discriminatory loopholes, in fact, directly contributed to the level of bureaucratic discretion involved in the process, which typically resulted in further targeting of minorities. The Court has also refused to address flaws in the functioning of the quasi-judicial Foreigners Tribunals (FT), despite studies revealing that the FTs have discriminated against particularly Muslims.\textsuperscript{408} These FTs will now determine the fate of the 1.9 million people who have excluded from the final NRC and are at risk of statelessness. The SC has also not deemed fit to provide justice to the nearly 1000 alleged ‘foreigners’ who have already been condemned to life in Assam’s detention centres, with their families separated and with no mechanism to get out.\textsuperscript{409}

3. Facilitating the CAA, and quelling anti-CAA dissent\textsuperscript{410}

The Citizenship Amendment Act (CAA), 2019, the BJP government’s attempt to ensure that only Muslims would be left out of the Assam NRC and a proposed all-India NRC, has been described by the United Nations (UN) as “fundamentally discriminatory”\textsuperscript{411}. A host of petitions - over 140 at last count\textsuperscript{412} - have been filed before the SC, most of them asserting that the CAA violates the basic constitutional principle of equality and secularism.\textsuperscript{413} Despite such fundamental questions of constitutionality, the SC has not shown any urgency in hearing the matter or providing a stay on implementation of the Act. There is no news when hearing on these Public Interest Litigation (PIL) will commence, despite passage of more than 70 days. This has contributed to the volatile situation in the country, with anti-CAA protests expanding far and wide. The Chief Justice of India (CJI)

\textsuperscript{407} The SC Is Exceeding Its Brief as the Apex Judicial Organ in the NRC Case https://thewire.in/law/nrc-case-article-21-supreme-court

\textsuperscript{408} A VICE Study of judgements passed by 4 of Assam’s FTs revealed that nearly 9 out of 10 cases heard were against Muslims. Almost 90% of those Muslims were declared illegal immigrants - as compared with 40% of Hindus tried. For more: https://news.vice.com/en_us/article/3k33qy/worse-than-a-death-sentence-inside-indias-sham-trials-that-could-strip-millions-of-citizenship


\textsuperscript{410} For more, see the ‘Disenfranchising citizens’ section of this compendium.

\textsuperscript{411} As per Article 14 of the Indian Constitution, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

\textsuperscript{412} https://www.indiatoday.in/india/story/supreme-court-hear-over-pleas-challenging-citizenship-amendment-act-cao-today-1638948-2020-01-22

\textsuperscript{413} For more, see the ‘Disenfranchising Citizens’ section of this compendium.
has, in fact, remarked that petitions questioning the validity of the CAA would be heard only after people stop violence - a reference to anti-CAA protests, which have largely been peaceful except where the State has exercised force. This was listed by a former Chief Justice of the Delhi High Court, as one of the SC’s many recent missteps.414

The state response to anti-CAA protests has been brutal, particularly in states directly ruled by the BJP or where the BJP-led central government has oversight over the police. Executive excesses have resulted in the violation of various constitutionally granted fundamental rights, including the rights to life and liberty, free speech and expression, and the right to peaceful assembly. A spate of gag orders have been issued across the country, including in BJP-ruled Uttar Pradesh (UP), where orders prohibiting assembly (Section 144 CrPC)415 remains in effect to this day. Internet shutdowns have also been common. Over 30 people have been killed across the country, with UP alone accounting for 23 deaths, all of them Muslims. And in national capital Delhi, organised violence against Muslims raising their voice against the CAA has resulted in over 40 deaths, with the count still rising as this review was being written.

India’s courts, despite ostensibly setting high standards for itself in the past416 have, with some notable exceptions, failed to uphold these basic rights for its minorities. While the SC has taken suo motu notice of the matter of an infant dying in the cold after being brought to the prolonged sit-in led by Muslim women at Delhi’s Shaheen Bagh, and also separately heard on the matter of the protests causing obstruction of traffic, the Court has not entertained pleas regarding various violations of fundamental rights. It refused to hear pleas against the excessive use of force against students at the Jamia Milia Islamia (JMI) in Delhi, and referred the matter to a lower court (the Delhi High Court), which denied JMI students interim protection and deferred the case by a month and a half. Observers have pointed to other matters that courts have not taken suo motu notice of, including protestors and innocent Muslim bystanders being shot and


415 A colonial-era provision of the Code of Criminal Procedure (CrPC) that prohibits the assembly of four or more persons as a preventive measure.

416 “Dissent is the safety valve of democracy. If dissent is not allowed, then the pressure cooker may burst,” a 3-member bench of the Supreme Court had declared in 2018, while hearing on the arrest of 5 human rights activists. For more: https://www.livemint.com/Politics/SiXRDq8Thdk92IfR0CRvEP/Dissent-is-the-safety-valve-of-democracy-says-SC.html.
Majoritarian Consolidation: Chronicling the Undermining of the Secular Republic

killed; illegal confiscation of property of alleged protestors by the authorities without due process; Muslim children being illegally detained and tortured; and Muslim children being interrogated by police in Karnataka for organising a school play critical of the CAA.417

Despite the SC’s laxity regarding the suppression of dissent against the CAA, some lower courts (at the High Court level) have provided glimmers of hope.418 A prohibitory order in Bengaluru city was struck down by the Karnataka High Court (HC), which noted: “People have a democratic right to protest and express their dissent on government’s decisions about issues of importance.”419 While ordering the release of 21 accused in anti-CAA violence in Mangaluru, the Karnataka HC reprimanded the state police for its “deliberate attempt to cover up police excesses while whimsically implicating innocent persons”.420 Courts in Maharashtra, Rajasthan and Uttar Pradesh have recently taken stronger stand regarding the protection of rights and freedoms. On 19 December, the Allahabad (UP) HC ordered the National Human Rights Commission (NHRC) - which has not taken any initiative of its own, or responded adequately to petitions filed before it - to conduct an enquiry into the police action against students of Aligarh Muslim University (AMU). Separately, the Allahabad HC, in an ongoing case regarding the wider police crackdown in the state, issued several notices to the UP state government and ordered the furnishing of documents detailing police action. Allahabad HC also registered a suo motu PIL on Internet shutdown in the state, and questioned the government on habeas corpus pleas filed regarding the illegal detention of numerous prominent human rights defenders. And yet, a bench of the same Allahabad HC rejected a petition by student bodies against Firozabad local authorities for disallowing their peaceful protests, noting that such protests would “not be in national interest”.421 And in an example of apparent executive overreach, a judge at the Delhi HC who asked tough questions of the state police had his imminent transfer fast-tracked. The case was referred to a


419 Section 144 in Bengaluru: K’taka HC gives interim relief to anti-CAA protesters https://www.thenewsminute.com/article/section-144-bengaluru-k-taka-hc-gives-interim-relief-anti-caa-protesters-114482

420 Anti-CAA stir: Cops tried to cover up excesses, says HC https://timesofindia.indiatimes.com/india/anti-caa-stir-cops-tried-to-cover-up-excesses-says-hc/articleshow/74200108.cms

different bench, which granted the police four additional weeks to reply to claims by civil society groups demanding Police action against hate mongering and violence against senior BJP functionaries in Delhi’s ongoing violence.

4. Inadequate defence of civil liberties in Kashmir

The judiciary, especially the SC, has come under criticism from constitutional scholars for having “dodged, ducked, evaded and adjourned” several cases relating to personal liberty in Kashmir. After the recent abrogation of Article 370 and Internet shutdown—which had become the longest ever imposed in a democracy, and left Kashmiris’ livelihoods and the local economy in “tattered ruins” - the SC called for a “review” of the blockade, but stopped short of ordering any substantive actions, leaving it completely up to the executive. The right to access the Internet was earlier recognised by the HCs of Kerala and Guahati (Assam) as a fundamental right, but the SC failed to provide any relief to Kashmiris. And while SC noted that the repetitive imposition of Section 144 orders was an “abuse of power”, the SC again left the review of such orders up to the executive, which has historically failed to uphold basic human rights in Kashmir. The matter of thousands of Kashmiris being locked up without charge has also not warranted the SC’s attention.

Another recent example of the Indian judiciary’s failure to uphold basic human rights in Kashmir was in the case of illegal detentions of children, which was widely reported in the media and confirmed by our own research. Dismissing a PIL seeking a detailed enquiry into the same, the SC in December 2019 chose to accept the authorities’ version of events, which had disregarded media reports as ‘propaganda’ or ‘unverified’. The Court concluded that there had been no illegal detentions of Kashmiri children at all. When the petitioners brought up the case of 79 children who had been admittedly illegally detained as per the Jammu & Kashmir (J&K) Police’s own documents, one of the judges remarked, “Are you

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422 See the ‘Denying rights in Kashmir’ section of this compendium
423 Gautam Bhatia: The absentee constitutional court https://www.thehindu.com/opinion/lead/the-absentee-constitutional-court/article29394699.ece
424 ‘Many lives have been lost’: five-month internet blackout plunges Kashmir into crisis https://www.theguardian.com/world/2020/jan/05/the-personal-and-economic-cost-of-kashmiris-internet-ban
425 ‘Repetitive Section 144 orders abuse of power’. What Supreme Court said on Kashmir curbs https://www.hindustantimes.com/india-news/repetitive-section-144-is-abuse-of-power-what-supreme-court-said-on-kashmir-curbs/story-vCDPba48z2Ou7N7xk7sidkM.html
426 See ‘Denying rights in Kashmir’ section of this compendium.
aware what 15-year-olds are capable of these days?”

Earlier, in July 2016, the J&K Bar Association filed a PIL before the J&K HC seeking an end to the use of lethal pellet shotguns to quell street protests, a practice that has been described as having caused an “epidemic of dead eyes” and “the world’s first mass blinding.” The J&K HC, however, summarily dismissed the petition. In December 2016, the SC heard the same case and remarked that it would direct the government to stop its use of pellet shotguns only if there was no violence, no stone-throwing and students returned to class. The SC dragged its feet on the case till July 2019, when it referred the matter back to the J&K HC. The UN estimates that 1253 Kashmiri civilians were blinded by metal pellets between mid-2016 and end-2018 - blindings that could have been stopped if the SC had taken a stand.

5. The Ayodhya Verdict

Another recent example that shook Indian minorities’ faith in the Indian judiciary’s ability to protect their rights as equal citizens of India was the SC’s verdict in the Ayodhya case, when a 5-member bench of the court unanimously awarded the disputed site of the Babri mosque to the Hindu side for the construction of a temple. This was done even as the court acknowledged that the demolition of the mosque by extremist Hindus in 1992 was illegal, as was the clandestine placing of Hindu idols inside the mosque in 1949, which had converted part of the mosque site into a de facto temple.

The verdict of the SC has been picked apart by legal and constitutional scholars, who say that it was a violation of the doctrine of equity, which requires one who approaches the court seeking equity to do so with clean hands. The Muslim plaintiffs, who have not been accused of any illegality in the case, have essentially been punished for failing to provide evidence of their exclusive possession of the


429 India’s crackdown in Kashmir: is this the world’s first mass blinding? https://www.theguardian.com/world/2016/nov/08/india-crackdown-in-kashmir-is-this-worlds-first-mass-blinding


property from the time of its construction in 1528. The Hindu plaintiffs, on the other hand, were not asked to demonstrate their exclusive possession of the site. The Court also ordered the central government to formulate a scheme to facilitate the construction of the proposed temple, raising serious constitutional questions vis-a-vis secularism.

6. Conclusion

In a democratic system, the tussle between the judiciary and the executive is a constant battle. In the past, India’s courts have had a middling but respectable record of pushing back against executive overreach and defending individual liberties. Scholars have shown that judicial institutions have historically tended to acquiesce whenever the ruling party has had an overwhelming majority in Parliament. This is what we seem to be seeing in India today, with the courts increasingly siding with the dominant narrative of the ruling dispensation. This has left India’s religious minorities vulnerable like never before. Some lower courts have shown admirable resolve in defending constitutional ideals, but the SC - the watchdog of the Constitution and the ultimate protector of the fundamental rights of the people of India, including that of its religious minorities - has largely disappointed. As Justice AP Shah remarked, “It is for the SC [...] to decide whether or not it deserves the constitutional faith that the people of India repose in it, and whether or not it lives up to those expectations.