

## Hate Crime Against Muslims in India: Unpacking Model of Hate Underpinning International Human Rights Law

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### Abstract

The article aims to study the response of the Indian State to the rapidly increasing hate crimes against its Muslim population and assess the reaction against the international obligations of the State. Examining the legal and judicial approach towards the Indian model of hate, the article discusses the socio-legal implications of hate crimes on minorities, including the role played by the media in normalising hate against Muslims, threatening their constitutional and human rights. The inadequacy of laws in addressing hate and the overwhelming use of government-backed mandates to ghettoise Muslims and curb dissent are some of the pressing issues requiring intervention.

The article begins with a brief understanding of concepts religious nationalism, cow vigilantism, etc, in Indian parlance, goes on to discuss *the rights of minorities in the international context* and India's obligations under International human rights law. The following part shall examine *whether there is a lack of laws to protect minorities or a lack of enforcement by the State to safeguard the human rights of minority*. It will conclude with outlining possible consequences of the vilification of Indian Muslims, suggesting measures adequately addressing these challenges.

**Keywords:** Hate Crime, Communal Violence, International Human Rights Law, International Obligations

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## 1. Introduction

The last couple of decades have marked a site for thought-provoking debates on crucial issues related to modern India. The recent developments in the legal, cultural, political, and sociological aspects of some of the key concepts vis-a-vis Indian subcontinent have attracted the attention of academic fraternity worldwide. Yet, a clear understanding of terminology that populates modern Indian studies is a desideratum.<sup>1</sup> This part of the article is aimed to throw some light on the substantial entry points to the modern Indian politics to familiarize the readers with social, legal and political developments of these concepts in the subcontinent during the last decade or century in some cases. The theories surrounding the germane concepts like— ‘Hindutva’, ‘lynching’, ‘Gau Raksha (Cow Vigilantism)’, ‘Secularism’, ‘Fascism’ to name a few, are crucial to the understanding the state of law in contemporary India.

The term ‘Hindutva’ was publicized by the Indian revolutionary Vinayak Damodar Savarkar in his book *Hindutva: Who Is a Hindu?* (1928) which he wrote during 27 years of his prison term.<sup>2</sup> Hindutva here is not to be confused with ‘Hinduism’ which Savarkar himself clarifies as, “By an ‘ism’ it is generally meant a theory or a code more or less based on spiritual or religious dogma or system. But when we attempt to investigate into the essential significance of Hindutva we do not primarily – and certainly not mainly – concern ourselves with any particular theocratic or religious dogma or creed.”<sup>3</sup> ‘Hindutva’ is an ideology not merely of religion, but of common culture and origin which develops on the premise that Hindus are the descendant of ‘Vedic fathers’ who inhabited India since the dawn of history.<sup>4</sup> It popularises the dogma of Hindus being the only true Indians and other religions, specifically Abrahamic religions, are foreign invaders coming from the “far off Arabia or Palestine.”<sup>5</sup> However, the truth is far from this glorious mythical past. India has been a land of rulers and invaders, one after the other and the history is quite clear on this proposition unless someone tries to overlook or tamper the history.

It is explained further by Savarkar’s ideological successor, Madhav Sadashiv Golwalkar in his book *We, or Our Nationhood Defined* that the alien races of Muslims and Christians in India,<sup>6</sup> “must either adopt the Hindu

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<sup>1</sup> Gita Dharampal-Frick et al., “Introduction,” in *Key Concepts in Modern Indian Studies*, (NYU Press, 2015), ix. <http://www.jstor.org/stable/j.ctt15zc7zj.3>.

<sup>2</sup> Christophe Jaffrelot, “Hindutva,” in *Key Concepts in Modern Indian Studies*, eds. Gita Dharampal-Frick et al. (NYU Press, 2015), 108-110. <http://www.jstor.org/stable/j.ctt15zc7zj.45>.

<sup>3</sup> Indian Muslim Council—USA, “Golwalkar and the rise of militant Hindu nationalism” *Special Edition Digest*, February 2006, [https://www.iamc.com/golwalkar\\_fascism/#S2H6](https://www.iamc.com/golwalkar_fascism/#S2H6).

<sup>4</sup> Jaffrelot, “Hindutva,” 108-110.

<sup>5</sup> Vinayak Damodar Savarkar, *Hindutva* (New Delhi: Bharti Sahitya Sadan, 1923), 113; Sudha Ramachandran, “Hindutva Violence in India: Trends and Implications,” *Counter Terrorist Trends and Analyses* 12, no. 4 (June 2020): 16, [www.jstor.org/stable/26918077](http://www.jstor.org/stable/26918077).

<sup>6</sup> Savarkar, *Hindutva*, 113.

culture and language, must learn to respect and hold in reverence Hindu religion ... must lose their separate existence to merge in the Hindu race, or ... stay in the country wholly subordinated to the Hindu Nation, claiming nothing, deserving no privileges, far less any preferential treatment — not even citizen's rights.”<sup>7</sup>

### 1.1. Is Indian’s Secularism Under the Threat of Fascism?

While I am mired in writing the interpretation of ‘secularism’ in India, I wonder if India will remain ‘secular’ in near future, considering various petitions filed before the Supreme Court of India to strike down the words “Socialist” and “Secular” from the Constitution of India.<sup>8</sup> *Res ipsa loquitur*, secularism in India is the most difficult to understand and even more difficult to script. India is predominantly a religious society and in that parlance, secularism becomes a tricky concept to describe.<sup>9</sup> It can be understood better in comparison with ideas of secularism elsewhere in the world. Indian secularism is different from that of Europe but similar to multiculturalism of USA.<sup>10</sup> In France, multiculturalism is regarded as divisive of French integrity while in countries like US and India, multiculturalism is the essence of deriving identities. French secularism is similar to what Adrien Wing describes as “melting pot” in which every citizen, be them immigrants or those belonging to different cultures are melted into French.<sup>11</sup> Whereas, France has banned wearing of religious symbols like Muslim headscarf, Sikh turban, etc. in state schools; such a law in India and US would amount to violation of freedom of religion.<sup>12</sup> In the unfortunate events of establishing bad law, the High Court of state of Karnataka has banned wearing of headscarf by Muslim girls in state school quoting ‘secularism’.<sup>13</sup> But, barring Muslims student alone to wear headscarf and allowing others to continue with their religious symbols is not ‘secularism’ but discrimination and violation of freedom of religion of a community. Indian secularism, as it was understood while its adoption is that of inclusivity and can be better understood by Jaffrelot’s example of— “teaching Gita doesn’t go against Indian secularism.

<sup>7</sup> Madhav Sadashiv Golwalkar, *We, or Our Nationhood Defined* (Nagpur: Bharat Publications, 1939), 47-48.

<sup>8</sup> Debayan Roy, “Can State compel citizens to be secular given the freedom of religion? Plea in SC seeks removal of ‘Socialist’ and ‘Secular’ from Constitution,” Bar and Bench, accessed May 10, 2022, <https://www.barandbench.com/news/plea-in-sc-for-removal-socialist-secular-from-constitution>.

<sup>9</sup> Khalid Rahman, “Indian Secularism and Religious Minorities: The Case of Muslims,” *Policy Perspectives* 14, no.2 (2017):35–53. <https://doi.org/10.13169/polipers.14.2.0035>.

<sup>10</sup> Adrien Katherine Wing, “International Law, Secularism, and the Islamic World,” *AUILR* 24, no. 3 (2009): 419. <https://digitalcommons.wcl.american.edu/auilr/vol24/iss3/1>.

<sup>11</sup> Wing, “International Law, Secularism,” 419.

<sup>12</sup> Wing, “International Law, Secularism,” 418.

<sup>13</sup> “Hijab Ban Judgment Summary (Karnataka HC),” Supreme Court Observer, June 12, 2012, <https://www.scobserver.in/reports/hijab-ban-judgment-summary-karnataka-hc>.

Teaching Gita alone does.”<sup>14</sup> It is the religious tolerance that makes India a secular State. And unlike secularism in the Soviet Union it is nothing atheistic or antagonistic to religion.<sup>15</sup> In the Indian parlance, there are three core principles of secularism— freedom of religion; non-discrimination on the ground of religion; and separation of state institutions from religion.<sup>16</sup>

Secularism in liberal ideology means commitment to keep religion out of politics and the architects of Constitution of India believed in “getting good things from every religion” and teaching just one religion was regarded as transgression of secularism.<sup>17</sup> Indian secularism secures everyone’s freedom of religion which makes Indian Muslims and all other minorities feel same and safe in the country.<sup>18</sup> They have thus far put their trust in Constitutional promises of equality and prohibition of discrimination on religious grounds.

However, India is predominantly a Hindu society and the recently hiked momentum of Hindu majoritarianism threatens not only the constitutional spirit of minority protection but can also fan the flames of communalism in the country. This politically generated communalism of post independent India is more harmful for the Indian polity than that generated by British government. As Annapurna calls it as “an *indigenous communalism* but *indigenous* should not be confused with popular support”.<sup>19</sup> In the post independent India, communalism grew in four phases.<sup>20</sup> First phase (1947-65) - the most peaceful phase under secular and visionary leaders. The second phase (1965-90) - marked by the decline of secularism, with major political parties, - the Bharatiya Janata Party (here onwards, BJP) and Congress, exploiting religious sentiments for electoral gains. the phenomenal growth of BJP which vocalized the *Ram Mandir* (Ram Temple) issue, highlighted this shift. On that back, BJP rose from just 2 seats in 1984 to 85 seats in 1987 in the Parliament. Congress also used religion to better its electoral gains. The appeasement of Muslim, Dalit and Sikh minorities at various incidents in the past proves that every political party cared less for the nation. Third Phase (1991-2000) - A clear divide emerged between secularists and communalists, overshadowing national development with communal rhetoric. Fourth Phase (2000 onwards) aka “Active phase of communalism” - A dark phase characterized by increased communal tensions, notably initiated by the Gujarat riots in 2002. Hindu-Muslim riots was never a new idea for India but

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<sup>14</sup> Christophe Jaffrelot, “Misunderstanding Secularism,” *Indian Express*, August 11, 2014, <https://indianexpress.com/article/opinion/columns/misunderstanding-secularism>.

<sup>15</sup> Asghar Ali Engineer, “Islam and Muslims in India: Problems of Identity and Existence,” *Oriente Moderno* 23, no. 84 (2004): 76. [www.jstor.org/stable/25817918](http://www.jstor.org/stable/25817918).

<sup>16</sup> Prashant Amrutkar, “Indian Secularism: Is It a Way Out to Communalism?” *IJPS* 71, no.3 (July – Sept. 2010): 746. <https://www.jstor.org/stable/42748406>.

<sup>17</sup> Amrutkar, “Indian Secularism,” 746.

<sup>18</sup> Engineer, “Islam and Muslims in India,” 76.

<sup>19</sup> C.R. Annapurna, “The Theoretical Understanding of Communalism and Its Growth in India,” *IICQ* 42, no. 2 (Autumn 2015): 25-36. <https://www.jstor.org/stable/26316550>.

<sup>20</sup> Annapurna, “The Theoretical Understanding of Communalism,” 25-36.

nothing like the Gujarat violence was ever afflicted upon Indian Muslims prior to that. From this point onwards, communalism started shifting from communal conflict between two communities to meticulously planned violence against Muslims.

It should not be wrong to assert that India has been witnessing the traits of fascism since the rise of hyper-nationalist powers.<sup>21</sup> The Palestinian poet, Najwan Darwish illustrated in his poems, *In Hell*, as— “Today’s executioners are more professional: They put the gas chambers in their victims.”<sup>22</sup> Today’s fascism is breaking the victim psychologically. Meaning thereby, this mental subordination should reflect in their physical actions and that the Muslims should walk the streets of India in a constant fear and with lowered gaze.<sup>23</sup>

Professor Jason Stanley in his book *How Fascism Works: The Politics of Us and Them* describes fascism as “a technique to gain power”.<sup>24</sup> For today’s India, nevertheless, it is more of a technique of using the power already gained by ‘democratic’ means. If we asked whether there ‘were’ (or ‘are’) fascists in India, an answer in negative would only be a bias to a thumping positive.<sup>25</sup> However, fascism in India is much inspired yet much different from that in Europe. In its façade, it might not be like ‘grand fascism’ of Germany but it is a collective of minor fascisms of everyday intimidation of minorities with endless attacks on them, mob-violence in the name of cow-protection, slamming Muslims with draconian sedition laws,<sup>26</sup> and putting them behind bars on feeble grounds.<sup>27</sup> It is apparent but not straightforward, instead, it is paradoxical – actual and deceptive, visible and elusive simultaneously.<sup>28</sup> It is something that attacks the secular characteristic of the country.

According to historian Benjamin Zachariah, “India has the longest-running continuous fascist movement in the world — the Rashtriya Swayansevak

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<sup>21</sup> Badre Alam Khan, “Democracy, Hindu Majoritarianism and Question of the Socio-economic Rights,” *Counter Currents*, November 20, 2019, <https://countercurrents.org/2019/11/democracy-hindu-majoritarianism-and-question-of-the-socio-economic-rights>.

<sup>22</sup> Najwan Darwish, “In Hell – Najwan Darwish – Palestine,” Poetry International, accessed June 1, 2022, <https://www.poetryinternational.org/pi/poem/22188/auto/0/0/Najwan-Darwish/IN-HELL/en/tile>.

<sup>23</sup> Rana Ayyub, “Citizenship Bill Puts India on a Path to Become a Hindu Nationalist State,” *Washington Post*, December 10, 2019, [https://www.washingtonpost.com/opinions/2019/12/10/citizenship-bill-puts-india-path-become-hindu-nationalist-state/?itid=5lk\\_inline\\_manual\\_27](https://www.washingtonpost.com/opinions/2019/12/10/citizenship-bill-puts-india-path-become-hindu-nationalist-state/?itid=5lk_inline_manual_27).

<sup>24</sup> Sunanda Datta-Ray, “Lingering Echoes of Fascism,” *Telegraph India*, July 11, 2020, <https://www.telegraphindia.com/opinion/the-spectre-of-fascism-is-yet-to-be-conquered/cid/1785958>.

<sup>25</sup> Satadru Sen, “Fascism Without Fascists? A Comparative Look at Hindutva and Zionism,” *South Asia: JSAS* 38, no.4 (2015): 691. <https://doi-org.uow.idm.oclc.org/10.1080/00856401.2015.1077924>.

<sup>26</sup> Like those under the Unlawful Activities (Prevention) Amendment Act 2019, National Security Act 1980, etc. It is important to note that most of the successful democracies have repealed the inhuman sedition laws.

<sup>27</sup> Sen, “Fascism Without Fascists?” 710.

<sup>28</sup> Sen, “Fascism Without Fascists?” 692.

Sangh (here onwards RSS)<sup>29</sup> was founded in 1925.”<sup>30</sup> Its founder M S Golwalkar had declared that his source of inspiration lies in Hitler’s ‘Weltanschauung’. His declarations then are as prevalent today: “To keep the purity of the race and its culture, Germany shocked up the world by her purging the country, of Semitic races – the Jews. Race pride at its highest has been manifested here. Germany has also shown how well -nigh impossible it is for races and cultures, having differences going to root to be assimilated to one united whole, a good lesson for us in Hindusthan to learn and profit by.”<sup>31</sup> It was this supremacist ideology that made Hindu nationalists think they have a racially-justified claim over India.<sup>32</sup> A century later, his followers seem to have their source of inspiration in Hitler’s ‘Mein Kempf’. Mein Kempf, autobiography of the Nazi includes, “First condition that has to be fulfilled in every kind of propaganda, namely, a systemically, a one sided attitude towards every problem... propaganda must not investigate the truth objectively, in so far as it is favourable to its side... as soon as our own propaganda made the slightest suggestion that the enemy had a certain amount of justice on his side, then we laid down the basic on which the justice of our own cause could be questioned.” And the propaganda of the RSS revolves around these guiding points.<sup>33</sup> If this is not enough to establish a nexus between Modi-ian and Hitler-ian fascist philosophy, forced conversion is another evidence to do so, “...the foreign races in Hindusthan must either adopt the Hindu culture and language, must learn to respect and hold in reverence Hindu religion... and must lose their separate existence to merge into the Hindu race, or may stay in the country, wholly subordinated to the Hindu nation, claiming nothing... not even citizen’s rights.”<sup>34</sup> If this ideologue continues to grow with the pace which is apparent, the democracy will not take longer to be replaced by autocracy and secularism by fascism.

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<sup>29</sup> Rashtriya Swayamsevak Sangh (RSS) is a Hindu supremacist organisation established in 1925. It was denounced for assassinating Mahatma Gandhi in 1948, when it was banned for the first time. Their ideology was politically popularised by the BJP, which was formed under the political auspices of the RSS. Many scholars call it as “front organization” for the RSS. Despite the national bans on RSS and insistence of no involvement in politics, RSS has been and continues to be the rocking hand for the BJP’s cradle. See more at: Nathaniel Myers, “Right Tilt: India and the BJP,” *HIR* 23, no.1 (2001): 7-8. <https://www.jstor.org/stable/42762650>.

<sup>30</sup> Sunanda Datta-Ray, “Lingering Echoes of Fascism.”

<sup>31</sup> Golwalkar, *We, or Our Nationhood Defined*, 35-43.

<sup>32</sup> Sen, “Fascism Without Fascists?” 701.

<sup>33</sup> Balram, “Hitler, Hindutva and Its Allies,” *Counter Currents*, December 1, 2003, <https://www.countercurrents.org/comm-balram011203.htm>.

<sup>34</sup> Golwalkar, *We, or Our Nationhood Defined*, 47-48, 55-56.

## 2. Marginalisation of Muslims

“When politics uses religion it is not the text that can provide us with sociolegal clues but the context”

N. J. Demerath<sup>35</sup>

Marginalisation of Muslims in India started when religion and politics came together. Religion often mixes with politics in two ways- (i) when minorities are anxious of their self-respect and demand social equality and cultural identity, (ii) when majority attacks minorities in the veil of saving the nation from minorities who they see as ‘*other/outside*rs’. In India the majoritarian attacks on Muslim minorities with the incitement of creating a *Hindu Rashtra* (a Hindu State) from Muslims are justified by the majoritarian activists on the grounds that Muslims are their enemies because their origin, culture and loyalties belong to other countries.<sup>36</sup> India, besides being world’s largest democracy is one where the very idea of ‘minority’ is denied by the largest majoritarian party, the BJP and its parent organisation RSS. They have maintained their disapproval for the establishment of the Minorities Commission since its inception. Their rejection for minorities and their rights is evident as they plead for establishing a Human Rights Commission instead of Minorities Commission which reflects that the rights of minorities do not amount to human rights in their eyes or that they do not believe in human rights of minorities.<sup>37</sup> This rejection was laid by RSS commander K S Sudarshan as, “*every individual was born a Hindu and it was the religious rituals like ‘sunnat’ and ‘baptism’ that made them Muslim or Christian, meaning Muslims and Christians are converts from Hinduism, there’s a need to bring them back to being ‘Indianised/Hinduised’*”.<sup>38</sup> Muslims in India have always struggled for their security and identity within their country. First the partition riots left them extremely insecure and confused<sup>39</sup>, second, their nationalism is as yet questioned by the majority community because of their identity. Nevertheless, international human rights treaties which India is signatory of contain plentiful provisions on non-discrimination protecting a wide range of identity markers, including race, ethnicity, sex, religion, social origin etc. meaning thereby that identity should not be an obstacle in achieving human rights standards.<sup>40</sup> Constitution of India itself provides for

<sup>35</sup> Dipankar Gupta, “Citizens Versus People: The Politics of Majoritarianism and Marginalization in Democratic India,” *Sociology of Religion* 68, no.1 (March 2007): 33. <https://doi.org/10.1093/socrel/68.1.27>.

<sup>36</sup> Gupta, “Citizens Versus People,” 32.

<sup>37</sup> A G Noorani, “Minority Rights and Human Rights,” *Economic and Political Weekly* 41, no.18 (May 2006): 1741-42 <https://www.jstor.org/stable/4418165>.

<sup>38</sup> “Call to Face the War on Hinduism,” *Organiser*, January 8, 2006, <https://www.organiser.org/archives/dynamic/modules5630.html?name=Content&pa=showpage&pid=112&page=31>.

<sup>39</sup> Thousands of Muslims and Hindus were killed on both sides of the border during the partition riots.

<sup>40</sup> Corinne Lennox, “Human Rights, Minority Rights, Non-Discrimination and Pluralism: A Mapping Study of Intersections for Practitioners,” 5-6.

fundamental right of non-discrimination under various Articles as discussed in the previous section.<sup>41</sup>

The continuous incidents of communal violence and pogroms has led to the incessant marginalization of minorities. The past episodes of communal riots like that of Muzaffarnagar (2013), Saharanpur (2014), Bhagalpur (1989), Moradabad (1980), Ayodhya (1992) and the pogroms of Gujarat (2002) and Delhi (2020) have resulted in further degradation and alienation of minorities socially, politically and economically. *In all these aspects of loss what was lost the most was human rights of the minorities.* Marginalisation of Muslim minority in India is well-recorded by the two government commissioned reports—Sachar Committee Report 2006 and Misra Commission Report 2007. These reports have underscored a higher degree of discrimination against Muslims and their socio-economic exclusion than other religious minorities. However, not much policy actions have been taken for their upliftment that has exacerbated the situation.<sup>42</sup>

This part of the article will try to explain the model of hate in India by talking about the legal aspects of phenomenon of hate crime and hate speech and its development over the decades. The aim is to study the lacuna in laws in addressing the fierce subject of hate and the reason behind this legal void. It will go on to discuss the role of judiciary in upholding the rights of minorities. Lastly, the role of media in normalizing hate and some recent developments (like mob lynching, passing of Citizenship Amendment Act clubbed with National Register of Citizens and other draconian sedition laws towards the apparent ghettoization of Muslim minorities in India shall be discussed.

### **2.1. Historical Background of Hate in India**

On the midnight of 15th August 1947, India celebrated its independence, marking the end of a long struggle against colonialism but also witnessing the tragic division into two nations based on religion. Many Muslims chose to stay in India rather than migrate to Pakistan, highlighting a complex decision between their religious identity (*Qawm*) and homeland (*Watan*);<sup>43</sup> but the question lies, why did they not leave for Pakistan to side with their *Qawm*? Answering this question is an arduous and multi-faceted task involving various disciplines of study. But it is enthusiastic to find answers as much as being mired by the process.

This stems from the historical roots of Islam in India, which predate the invasion by Mohammad bin Qasim in the 7th century. While many view

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<sup>41</sup> Parliament of India, Constitution of India art 15-16, entered into force January 26, 1950, <https://legislative.gov.in/constitution-of-india>.

<sup>42</sup> Nida Kirmani, "How Oppressed are Muslims in India?" *Herald*, August 2, 2016, <https://herald.dawn.com/news/1153473>.

<sup>43</sup> It is a misconstrued impression of Indian Muslims in the political discourse that their allegiance is more towards their religious community (*Qawm*) than their nation (*Watan*).

Muslims as descendants of this invader, Islam was introduced earlier by Arab traders in Kerala's Malabar, who settled and converted locals peacefully. In fact, the place got its name from the Arabic word *ma`bar*, meaning passage, which got Indianised as Malabar, marking the foundations of Islam in India.<sup>44</sup> Nevertheless, Islam came to north India by the invasion of Mohammad bin Qasim, thus becoming a point of acrimony between Hindus and Muslims.<sup>45</sup> Subsequent invasions and rule by Muslim leaders like Shahabuddin Ghauri and Mahmoud Ghaznavi have often been mischaracterized as inherently destructive to Hindu traditions. However, historians argue that these actions were more about political power struggles than religious animosity.<sup>46</sup> The revisionist narratives promoted by political entities and rooted in colonial British history have fostered communal tensions in modern India, misrepresenting the coexistence and shared history of Hindus and Muslims.

The historical narrative surrounding India's freedom struggle has often marginalized the contributions of Muslim populations, portraying them as proponents of partition and violence. In reality, many Muslims sacrificed their lives for India's independence, and significant numbers opposed the partition, envisioning a secular and inclusive state. During the 1857 uprising, the repercussions for Muslims were severe, with thousands executed for their resistance. It is journaled there was no tree on the 180 km long tree-tunnel between Delhi and Moradabad except that a dead-body of a Muslim scholar hanged from it.<sup>47</sup>

Prominent figures such as Maulana Husain Ahmad Madani advocated for unity against the two-nation theory. Maulana Madani, wrote a book *Muttahida Qawmiyat aur Islam* (Composite Nationalism and Islam) and did a whirlwind tour to different parts of the country to convince Muslims not to be swindled by the partition theory.<sup>48</sup> Despite this loyalty, Indian Muslims have frequently faced labeling as 'others' and demands to prove their patriotism, leading to communal tensions. Notable instances of sectarian violence, such as the Jabalpur riots of 1962 and subsequent outbreaks in various cities, undermined Muslim confidence in the secular framework of Indian politics. Afterwards, every decade saw at least two major sectarian violence against Muslims which withered their confidence, both in politics and the justice system. The following communal holocausts in Muslim inhabited areas of Ahmedabad in 1969, Bhivandi in 1970, Jamshedpur and

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<sup>44</sup> Engineer, "Islam and Muslims in India," 71.

<sup>45</sup> Engineer, "Islam and Muslims in India," 71.

<sup>46</sup> Faizan Mustafa, "#Babri Case: Why Temples Were Destroyed in India? Episode 4: Explained by Prof. Faizan Mustafa," Faizan Mustafa's Legal Awareness Web Series: LAW's, 17:02, September 29, 2019, <https://youtu.be/D0k-23SCIyI>.

<sup>47</sup> "1857: When India's Muslim Scholars Died for a Courageous Rebellion," Hizb Ut-Tahrir Australia, November 14, 2016, <https://www.hizb-australia.org/2016/11/1857-when-indias-muslim-scholars-died-for-a-courageous-rebellion>.

<sup>48</sup> Engineer, "Islam and Muslims in India," 73.

Aligarh in 1978, Moradabad in 1984, Meerut in 1987, Bhagalpur in 1989 and so on claimed thousands of lives, mostly Muslims and displaced many.<sup>49</sup> These incidents of hateful sectarian violence against shook the foundations of Indian secularism making Muslims feel socially excluded and extremely insecure in which they believed as their own country.<sup>50</sup> The demolition of the Babri Masjid in December 1992 intensified communal strife, significantly harming India's constitutional values and resulting in widespread riots while further entrenching majoritarian violence. The 2002 Gujarat riots epitomize this cycle of violence, marked by devastating loss of life and property, illustrating the profound challenges to secularism and social cohesion in contemporary India. The Gujarat massacre of 2002 can be written in black letters in the history of majoritarian violence where the houses were burned, women were raped and men were butchered resulting in over 2000 deaths.<sup>51</sup> Gujarat burned with a State sponsored fire of hate against Muslims for several days.

These events often referred to as riots could more accurately be described as orchestrated acts of violence against specific religious minorities, driven by certain political entities. In many of these instances, the inaction of the police, or their unchecked inclination to side with perpetrators, has exacerbated the situation, fueling angry mobs. Professor Ashutosh Varshney of Brown University identifies these incidents as 'pogroms,' noting that the Gujarat riots were a particularly severe example in independent India.<sup>52</sup> A government elected through democratic processes and committed to upholding constitutional values should act in a manner that protects all citizens.<sup>53</sup> When a political group undermines these constitutional guarantees, it poses serious challenges to the principles of democracy. Some factions, like the RSS, have openly criticized the Constitution and the national flag for their secular nature, which they perceive as being contrary to Hindu interests. For instance, in 1993, BJP President M. M. Joshi labeled the Constitution as "a pile of garbage" and advocated for a reevaluation of its provisions, particularly those safeguarding minority rights.<sup>54</sup>

This backdrop has contributed to a growing culture of hate, where numerous incidents have denied fundamental rights to minorities, resulting in significant marginalization and social exclusion. As Wani and Khazir

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<sup>49</sup> Engineer, "Islam and Muslims in India," 80.

<sup>50</sup> Surabhi Chopra, "Archives of Violence: Seeking and Preserving Records on Mass Sectarian Attacks in India," *NLSIR* 28, no.1 (2016): 61-73. <https://www.jstor.org/stable/44283665>.

<sup>51</sup> Chopra, "Archives of Violence," 63.

<sup>52</sup> Ashutosh Varshney, "Understanding Gujarat Violence by Contemporary Conflicts," *SSRC* 4, no. 1 (Winter 2004): 1-40. [https://issuu.com/ssrcitemissues/docs/i\\_i\\_vol\\_4\\_no\\_1\\_2003?e=24618429/35326188](https://issuu.com/ssrcitemissues/docs/i_i_vol_4_no_1_2003?e=24618429/35326188).

<sup>53</sup> Varshney, "Understanding Gujarat Violence," 1-40.

<sup>54</sup> A G Noorani, "Is Constitution 'Anti-Hindu' or the RSS Anti-Indian?" *Deccan Chronicle*, September 29, 2019, <https://www.deccanchronicle.com/opinion/columnists/290919/is-constitution-anti-hindu-or-the-rss-anti-indian.html>.

emphasize, moving away from colonial concepts of social exclusion toward a framework of social inclusion and egalitarianism is essential for fostering a successful democratic society in our multicultural and pluralistic context.<sup>55</sup>

India, with its rich religious diversity, currently faces challenges in maintaining religious tolerance. Demerath aptly captures this complexity with the metaphor of a moth drawn to a flame, illustrating that individuals may be attracted to political or religious ideals; however, this attraction carries the risk of conflict if not navigated carefully. By promoting dialogue and understanding among different communities, we can mitigate these risks and build a more inclusive society.<sup>56</sup>

## 2.2. Model of Hate and Legal Framework in India

Hate itself is not a crime; it is merely an abstract concept that requires specific elements to manifest into something tangible. Generally an offence comprises three critical stages: (i) abetment (ii) preparation (iii) commission. In the Indian context, anti-Muslim hatred is systematically cultivated through the dissemination of a distorted historical narrative and prejudicial texts, further propagated by mainstream and social media outlets. This pervasive ideology is often amplified by majoritarian organizations, notably the Rashtriya Swayamsevak Sangh (RSS) and its affiliates. The culmination of this process is evident in various forms, with the most notorious being mob lynching.

The term 'lynching' finds its origins in 18th-century America, where acts of racial violence against Black individuals were perpetrated by white supremacist groups. While the term may lack a formalized definition in the Indian legal lexicon, its implications are significant. In India, lynch mobs frequently target Dalits who challenge the entrenched caste hierarchy and Muslims for the sole reason of their religious identity.<sup>57</sup>

Though there has never been a quiet time in the history of communalism in India, the nature of lynching serves a distinct purpose. Riots typically require the involvement of political and administrative apparatus and tend to produce temporary adverse effects, while spontaneous yet systematic acts of lynching serve to reinforce societal hierarchies, effectively reminding minorities of their subjugated status. While riots cause collateral damage, lynchings are premeditated acts that are propagandised to instill constant fear among targeted groups. Such targeted killings can be justified with reasons like cow vigilantism, *love jihad*,<sup>58</sup> or other forms of intimidation, but it is

<sup>55</sup> Hilal Wani and Sakina Khazir, "Discourse on Minority Rights, Identity, and Exclusion: An Indian Perspective," 1-18.

<sup>56</sup> James Burk, "Crossing the Gods: World Religions and Worldly Politics. By N.J. Demerath III. New Brunswick: N.J.: Rutgers University Press, 2001. 284 pp. \$28.00," *Journal of Church and State* 44, no. 4 (Autumn 2002): 823-824. <https://doi.org/10.1093/jcs/44.4.823>.

<sup>57</sup> "Lynchings," Hindutva Watch, accessed May 22, 2020, <https://hindutvawatch.org/lynching>.

<sup>58</sup> Muslim men are labelled as paedophiles and sexual predators. They are accused of luring Hindu girls and then converting them to Islam, hence causing 'love jihad'. Many Muslim men have been a victim of 'love jihad' and were beaten up and killed for inter-faith affairs or marriages.

crucial to acknowledge that not all lynchings require an explanation. They can be understood as politically condoned micro-wars against minority populations.

In modern discourse, hate crimes have transcended acts of mob violence and majoritarian oppression, extending to hate speech capable of inciting violence. European Union (EU) law describe hate speech as “public incitement to violence or hatred directed to groups or individuals on the basis of certain characteristics, including race, colour, religion, descent and national or ethnic origin”.<sup>59</sup> While Indian legislative framework may remain relatively silent on this issue, the 267th Report of Law Commission of India writes, “hate speech is an incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like”.<sup>60</sup>

In India, the absence of specific laws requires that hate speech is effectively governed by a combination of various statutes and judicial pronouncements. Article 19 (1) of Constitution of India grants fundamental freedom of speech and expression to all its citizens with reasonable restrictions under Article 19(2).<sup>61</sup>

The 267<sup>th</sup> Law Commission Report outlines various legislations regulating hate speech in India<sup>62</sup>, including Section 295A of the IPC, which penalizes acts intended to outrage religious feelings<sup>63</sup>. Similar provisions are found under Sections 153A, 153B, and 505(1) and (2) of the IPC. Ironically, these laws were enacted before the technological age. The most recent provision addressing offensive messages, Section 66A of the IT Act, was struck down in the *Shreya Singhal v. Union of India*<sup>64</sup> case, where the Supreme Court ruled that speech can only be restricted under Article 19(2) when it incites violence.<sup>65</sup>

The enactment of the *Bharatiya Nyaya Sanhita* (BNS) in 2023 sparked optimism for more robust provisions against hate crimes; however, it

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<sup>59</sup> “Framework Decision on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law,” EU law - EUR-Lex, Accessed May 22, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:133178>.

<sup>60</sup> Law Commission of India, *Hate Speech (Report No. 267)* (Law Commission of India, March 23, 2017). <http://lawcommissionofindia.nic.in/reports/Report267.pdf>.

<sup>61</sup> Parliament of India, Constitution of India art 19.

<sup>62</sup> The Indian Penal Code (1860) (hereafter IPC), the Representation of The People Act (1951), the Protection of Civil Rights Act (1955), the Religious Institutions (Prevention of Misuse) Act (1988), the Cable Television Network Regulation Act (1995), the Cinematograph Act (1952), the Code of Criminal Procedure (1973), Law Commission of India, *Hate Speech*, 5.

<sup>63</sup> Parliament of India, Indian Penal Code (IPC), entered into force October 6, 1860, Act no. 45 of 1860, section 295A.

<sup>64</sup> *Shreya Singhal v. Union of India*. (2013) 12 SCC 73.

<sup>65</sup> Devika Agarwal, “Hate Speech in India: Media's Rabble-rousing Doesn't Help Cause, Proves Counter-productive to Free Speech,” *Firstpost*, published September 14, 2018, <https://www.firstpost.com/india/hate-speech-in-india-medias-rabble-rousing-doesnt-help-cause-proves-counter-productive-to-free-speech-5182231.html>.

ultimately proved disappointing for the nation, as it offered only a superficial approach to this critical issue. The BNS restructures key hate speech and communal offence provisions from the IPC without making substantive improvements to their clarity or enforceability. Sections 295A and 298 IPC, which separately addressed deliberate insult to religion and utterances wounding religious sentiments, are merged into Section 299 BNS. While the consolidation brings formal clarity, it risks narrowing protection by potentially excluding less severe but harmful acts that Section 298 previously captured. The threshold of "deliberate and malicious intent" remains high, which may burden victims of everyday religious provocation. Similarly, legislature made a failed attempt in defining hate crime/mob lynching under Section 103 (2) and 117 (4) where deliberate omission of the word 'religion' and use of 'personal belief' underscores the loose legislative intent to criminalise mob lynching. These provisions are not only vague but overly broad and provide significant potential for misuse by placing a high threshold of burden of proof on the victim. Besides, the new laws fail to address the root causes of hate crime, such as spread of misinformation.

Section 153A IPC, now Section 196(1)(a) BNS, continues to criminalize speech promoting enmity on religious and communal grounds. However, its placement under "*Offences Against Public Tranquillity*" reframes it as a public order issue rather than a rights violation. This shift deprioritizes the lived realities of minorities and may allow enforcement to focus on disruptions rather than discrimination. Likewise, Section 153B IPC, dealing with assertions prejudicial to national integration, is restated in Section 197 BNS. Although the provision is linguistically cleaner, it remains vague and susceptible to politicised use, especially against dissenters or minority advocates. No procedural safeguards are introduced to prevent such misuse.

Sections 505(1) and 505(2) IPC, now Section 353(1) and (2) BNS, retain the broad criminalisation of statements inciting public mischief or hatred. While they attempt to separate incitement and hate more distinctly, the underlying vagueness persists. The lack of clear intent thresholds or victim protections means enforcement may still be arbitrary, disproportionately targeting critics rather than hate propagandists.

Overall, the BNS retains the structure of colonial-era public order laws but misses the opportunity to reorient them toward protecting vulnerable groups. By framing hate crimes through the lens of tranquillity and integration rather than equality and dignity, the revisions preserve the letter of the law but weaken its emancipatory potential in safeguarding minorities in today's communal climate. Moreover, the BNS has only touched tip of the iceberg making it all the way more crucial to have special anti-hate laws for the country.

The Supreme Court of India, however, touched a milestone in this regard by issuing guidelines and directives aimed at addressing the issue of mob lynching in the case of *Tehseen S. Poonawalla* (2018).<sup>66</sup>

The judgment firmly addressed the concerning tendency of mob taking law in their hands and administering justice. The court stated that, “no individual in his own capacity or as a part of the group can take law into his or their hands and deal with a person treating him as guilty”. Alongside other cases the Court relied on *Riggins v. US*<sup>67</sup> -- the landmark case on mob lynching in America to underscore the repercussions of mob justice on rule of law. The Court feared that if left unaddressed, lynching will potentially become “the new normal” comparing it to the time when the United States was infamously labelled by J. Mark Twain as “the United States of Lyncherdom” due to exponential increase in the lynching incidents.<sup>68</sup> The Court also observed that the pluralistic society like India stands on the principle of “unity and diversity” which must be respected by all citizens.<sup>69</sup> This heterogenous culture, however, is under attack by such mob violence targeting individuals for their religious identities. Hence, the Court issued a set of guidelines – preventive, remedial and punitive – to address the offence of mob lynching as holistically as possible. In sync with these guidelines, State of Manipur drafted a law against mob lynching the same year.<sup>70</sup> Other states including Rajasthan, Jharkhand and West Bengal though also passed draft bills against mob lynching, they faltered due to lack of a definition of lynching under the IPC.

It is noteworthy that Section 8 of the Representation of The People Act, 1951 disqualifies individuals from contesting elections if found involved in any act amounting to illegitimate use of freedom of speech and expression.<sup>71</sup> However, the current cabinet seems to be built on a foundation of inciting violence through hate speeches. One cannot forget the February 2020 hate speeches under the garb of right to freedom of speech. The incendiary speeches given by at least four politicians of BJP addressed those protesting against the new draconian citizenship law.<sup>72</sup> What followed was one of the worst violence that the capital has seen in the modern times. It unleashed a fanatic majoritarian madness on minority inhabited areas of North East Delhi which claimed hundreds of lives, left scores injured and a dozen mosques destroyed. Professor Varshney said, “On the whole, the Delhi riots of 2020

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<sup>66</sup> *Tehseen S. Poonawalla v. Union of India*. AIR 2018 SC 3354.

<sup>67</sup> *Riggins v. US*, 199 U.S. 547 (1905)

<sup>68</sup> *Tehseen S. Poonawalla v. Union of India*. <https://indiankanoon.org/doc/71965246>.

<sup>69</sup> *Tehseen S. Poonawalla v. Union of India*.

<sup>70</sup> *The Manipur Protection from MobViolence Ordinance* of 2018. Manipur Gazette. Manipur Ordinance No. 3 of 2018.

<sup>71</sup> Law Commission of India, *Hate Speech*, 6.

<sup>72</sup> Citizenship Amendment Act 2019 — the most opposed legislation in the history of independent India, on the ground that it can potentially categorize Indian Muslims as second-class citizens.

look like a pogrom, à la Gujarat 2002 and Delhi 1984. Mobs unleashing savage violence while the cops look away, or join the mob, instead of neutrally intervening to crush the riot.”<sup>73</sup> Despite the charges brought against these politicians for their actions, their positions were notably elevated. The impact of their hate speeches was exacerbated by their widespread circulation on social media.

### 2.3. Role of Media and Social Media in Publicizing Hate

A Prussian general, Carl von Clausewitz outlines three main factors that call for a strife— the overall planning and administration, the military, and the emotional vocalization of the campaign. While the first two are taken care of by the divisive politics, the third element is fulfilled by the islamophobic mainstream media in the country which vilify Muslims to incite emotions of unity among majority.<sup>74</sup>

Though section 12 (2) (b) of the *Prasar Bharati* (Broadcasting Corporation of India) Act, 1990 renders a positive duty on public broadcaster “to safeguard the citizen’s right to be informed freely, truthfully ... and presenting a fair and balanced flow of information ... without advocating any opinion or ideology of its own.”<sup>75</sup> But for the last decade, Indian media has been acting like government’s mouthpiece than being independent news telecasters. With open display of anti-Muslim hate they mainly depend upon “sensationalised” news with a lot of confirmation bias.<sup>76</sup> Year 2014 was a breakpoint for India, not only because the right wing came to power in the centre but also because Indian media’s independence and neutrality was compromised.<sup>77</sup> Instead of accurately depicting incidents of hate crime across the country, media often presents victims as perpetrators. Only a handful of outlets are committed to uncovering the truth, but they frequently encounter majoritarian backlash and are subjected to derogatory comments and death threats.<sup>78</sup>

The harm caused by social media by normalizing hate in the minds of people is unfathomable. While social media giants like Facebook reportedly took down around 3 million hateful posts globally in 2019, the social media

<sup>73</sup> Jeffrey Gettleman, Suhasini Raj, and Sameer Yasir, “The Roots of the Delhi Riots: A Fiery Speech and an Ultimatum,” *New York Times*, February 26, 2020, <https://www.nytimes.com/2020/02/26/world/asia/delhi-riots-kapil-mishra.html>.

<sup>74</sup> Ram Madhav, “This Election Result Is a Positive Mandate in Favour of Narendra Modi,” *Indian Express*, May 24, 2019, <https://indianexpress.com/article/opinion/columns/lok-sabha-elections-result-narendra-modi-bjp-government-congress-5745313>.

<sup>75</sup> Parliament of India, The *Prasar Bharati* (Broadcasting Corporation of India) Act, Act no. 25 of 1990, enacted on September 12, 1990, section 12 (2) (b).

<sup>76</sup> Zainab Sikander, “Indian Media Is Waging a Holy War Against Muslims. It Acts Like Hyenas,” *The Print*, April 13, 2020, <https://theprint.in/opinion/indian-media-waging-holy-war-against-muslims-hyenas/400407>.

<sup>77</sup> Sikander, “Indian Media Is Waging a Holy War.”

<sup>78</sup> Mrinal Pande, “Government Forcing Media to Speak in Their Support,” YouTube, September 4, 2019, <https://www.youtube.com/watch?v=MsEG9Cz0Cz0>.

policies in India had a different narrative.<sup>79</sup> Despite its anti-violence policy<sup>80</sup>, it failed to apply its hate speech rules to leading party's spokespersons for the fear of loss of business prospects of Facebook in India.<sup>81</sup> The platform interfered with India's electoral democracy by spreading hate campaigns especially during the general elections. A 2020 report by the Wall Street Journal described how Indian Executive of Facebook allowed Narendra Modi's online hate campaign and disparaged opposition.<sup>82</sup>

According to Equality and Human Rights Commission Research report, "The role of the internet in disseminating and galvanising support for hate-based ideologies is not to be underestimated."<sup>83</sup> The WSJ report has pointed out in this regard that the absence of proper regulatory and accountability measures, Facebook has caused much harm to social relations and violated Indian laws.<sup>84</sup>

For instance, incendiary and fabricated WhatsApp messages circulated by right-wing platforms have intimidated Hindus by presenting exaggerated statistics about the Muslim population, claiming that Muslims will overtake India by 2050, which has intensified resentment towards Muslims.<sup>85</sup> Similarly, while the coronavirus pandemic was a global challenge, Indian media and social media popularized the narrative under the hashtag #coronajihad. Thenmozhi Soundarajan, director of Equality Labs, noted, "Corona jihad is this new idea that Muslims are weaponizing the coronavirus to target Hindus."<sup>86</sup>

#### **2.4. Documentation of Hate Crimes**

Documentation of hate crimes is essential for ensuring justice for the victims. Despite their prevalence, these offences are significantly underreported in India. Unfortunately, a precise data on hate crimes is indefinite due to several reasons— firstly, due to their underreportedness. Secondly, current legal

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<sup>79</sup> Meta, "Facebook, Community Standards Enforcement Report," Transparency Centre, accessed June 1, 2022, <https://transparency.facebook.com/community-standards-enforcement>.

<sup>80</sup> Facebook's policy "Facebook wouldn't permit the use of its platforms for hateful content that could instigate violence without regard to anyone's political position or party affiliation."

<sup>81</sup> "Law Unto Itself? Charges Raised Against Facebook, on Permitting Hate Speech in India, must be Investigated," *Times of India*, August 29, 2020, <https://timesofindia.indiatimes.com/blogs/toi-editorials/law-unto-itself-charges-raised-against-facebook-on-permitting-hate-speech-in-india-must-be-investigated>.

<sup>82</sup> Jeff Horwitz and Newley Purnell, "Facebook Executive Supported India's Modi, Disparaged Opposition in Internal Messages," *Wall Street Journal*, August 30, 2020, <https://www.wsj.com/articles/facebook-executive-supported-indias-modi-disparaged-opposition-in-internal-messages-11598809348#>.

<sup>83</sup> Mark A. Walters, Rupert Brown, and Susann Wiedlitzka, *Causes and Motivations of Hate Crime* (Equality and Human Rights Commission, July 2016). <https://www.equalityhumanrights.com/sites/default/files/research-report-102-causes-and-motivations-of-hate-crime.pdf>.

<sup>84</sup> "Law Unto Itself?"

<sup>85</sup> Rana Haq et al., "Diversity in India: Addressing Caste, Disability and Gender," *EDI* 39, no.6 (July 2020): 588. <https://doi.org/10.1108/EDI-04-2020-0095>.

<sup>86</sup> Billy Perrigo, "It Was Already Dangerous to Be Muslim in India, Then Came the Coronavirus," *Time*, April 3, 2020, <https://time.com/5815264/coronavirus-india-islamophobia-coronajihad/>.

framework fails to categorize them as distinct offenses, which undermines accountability. Thirdly, the perpetrators frequently receive protection from law enforcement and administrative bodies. Fourthly, victims' families do not lodge complaints due to the fear of retribution. Lastly and most crucially, fading confidence of minorities in the justice system stemming from the inability of local enforcement authorities to fulfil their constitutional and international human rights obligations to protect minorities.<sup>87</sup>

In the absence of a standard reporting mechanism the hate crimes data varies from one report to another. In its report in 2019 Human Rights Watch documented 254 incidents of crimes against religious minorities between January 2009 and October 2018, 90 percent of which took place after 2014. In the words of Maja Daruwala, senior advisor to Commonwealth Human Rights Initiative, "The obvious impunity for the string of crimes that have taken place, and their hugely shameful valorization by some leaders, is distinctly a strong factor in their continuation."<sup>88</sup> Amnesty International India also launched its hate-documenting website '*Halt the Hate*' in September 2015 after the initial incident of mob murder of Mohammad Akhlaq in Uttar Pradesh. In its report released in 2019, it has recorded a sum of 902 reported hate crimes in India between September 2015 and June, 2019 with a maximum increase in the years 2018-19.<sup>89</sup>

Incidentally, the government of India evaded to publish its Crime in India Report for three years. The report was due on National Crime Records Bureau (NCRB) in 2016 which got published in 2019 with absolutely no mention on crimes against religion or hate crimes.<sup>90</sup> Roma Malik, a tribal rights activist says, "They are suppressing it very blatantly and very shamelessly. The government is shutting down voices of dissent and shrinking democratic space."<sup>91</sup> A notable number of databases were suspiciously shut down during 2015-20. For instance, Hindustan Times database "*HateTracker*" that was aimed as a "national database on crimes in the name of religion, caste and race"<sup>92</sup> was quietly taken down in October 2017. Besides, two other facts journalism organisations, *IndiaSpend* and *Factcheck* who were actively working on their project of recording incidents of hate crime abruptly pulled

<sup>87</sup> "Hate Crime Reports on an Alarming Rise – Reveals Amnesty International India's '*Halt the Hate*,'" Amnesty International India, October 24, 2019, <https://amnesty.org.in/news-update/hate-crime-reports-on-an-alarming-rise-reveals-amnesty-international-indias-halt-the-hate>, 27.

<sup>88</sup> "Violent Cow Protection in India: Vigilante Groups Attack Minorities," Human Rights Watch, February 18, 2019, 3. <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities>.

<sup>89</sup> Amnesty International India, "Hate Crime Reports on an Alarming Rise."

<sup>90</sup> National Crime Records Bureau, *Crime in India 2019 – Statistics Volume 1*, New Delhi: National Crime Records Bureau, Ministry of Home Affairs, 2020. [https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1653730573\\_CII%202019%20Volume%201.pdf](https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1653730573_CII%202019%20Volume%201.pdf).

<sup>91</sup> "Violent Cow Protection in India," 3.

<sup>92</sup> "After Editor's Exit, Hindustan Times Pulls Down Controversial '*Hate Tracker*,'" *The Wire*, October 5, 2017, <https://thewire.in/media/hindustan-times-hate-tracker>.

down their data.<sup>93</sup> Vrinda Grover, remarks, “the State denies that these crimes are happening.”<sup>94</sup> Fortunately, the strong presence of civil society in India never gave into the political pressure and kept tracking the incidents of hate crime. Though handful, organisations like *Karwan-e-Mohabbat*, Maktoob Media and Muslim Mirror among others are still courageous to document these offences.

### **2.5. Role of Judiciary in Addressing Hate Crime?**

The engraving of Constitution in day-to-day life and judicialization of politics possess an extended history in India.<sup>95</sup> Rohit De precisely points out in his book *A People's Constitution*: “there is not a single important issue of political life in India that has not, by accident or design, been profoundly shaped by the Supreme Court's interventions.”<sup>96</sup> On one side of the spectrum, the Supreme Court of India is referred to as “most powerful constitutional court in the world” with wide powers of Judicial Review.<sup>97</sup> On the other side, systemic failure of the government and the citizens to abide by law of the land is in disparity with its constitutional eloquence.<sup>98</sup> Lately, the apex court has failed to uphold the confidence of Muslims by its interpretation of constitutional rights of minorities and social justice in India. From interpreting the rights of minorities in *Re Kerala Education Bill*<sup>99</sup> and upholding social justice<sup>100</sup> in cases like *Badshah v. Urmila Godse and another*,<sup>101</sup> to denying justice to the victims of mob lynching,<sup>102</sup> Supreme Court has dithered the Muslims of India. The same Court which is shying away in — deciding the constitutionality of Citizenship (Amendment) Act 2019,<sup>103</sup> denying basic human rights to peoples of Kashmir by refraining to

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<sup>93</sup> “Fact Checker Pulls Down Hate Crime Database, IndiaSpend Editor Samar Halarnkar Resigns,” *Scroll*, September 12, 2019, <https://scroll.in/latest/937076/factchecker-pulls-down-hate-crime-watch-database-sister-websites-editor-resigns>.

<sup>94</sup> Kai Schultz et al., “In India, Release of Hate Crime Data Depends on Who the Haters Are,” *New York Times*, October 24, 2019, <https://www.nytimes.com/2019/10/24/world/asia/india-modi-hindu-violence.html>.

<sup>95</sup> Rohit De, *A People's Constitution: The Everyday Life of Law in the Indian Republic* (PUP, 2018).

<sup>96</sup> Pratap Bhanu Mehta, “India's Judiciary: The Promise of Uncertainty,” in *India's Public Institutions*, ed. Pratap Mehta and Devesh Kapur (OUP, 2005), 159.

<sup>97</sup> De, *A People's Constitution*.

<sup>98</sup> De, *A People's Constitution*.

<sup>99</sup> In re: Kerala Education Bill, 1959 1 SCR 995.

<sup>100</sup> Ankita Chakraborty and Dipa Dube, “The Quest for Truth in Criminal Justice- Revisiting the Malimath Committee Recommendations,” *Indian Journal of Criminology* 46-47 (2018-19): 5. <https://nludelhi.ac.in/download/publication/Indian%20Journal%20of%20Criminology%202018-19.pdf>.

<sup>101</sup> *Badshah v Urmila Godse and Another*, (2014) 1 SCC 188. SC reiterated, “After all, the ultimate duty of the courts is to facilitate the cause of social justice.”

<sup>102</sup> Mohammad Akhlaq, one of the first victims of cow vigilantism who was lynched in September 2015, still awaits justice after 7 years.

<sup>103</sup> Gettleman, Raj and Yasir, “The Roots of the Delhi Riots.”

restore internet services wholly in the state for five years now,<sup>104</sup> once said in its judgement:<sup>105</sup>

So long as the Constitution stands as it is, we conceive the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own. Throughout the ages...men of diverse creeds, cultures, and races- Aryans and non-Aryans... Pathans and Mughals have come to this ancient land from distant regions and climes. India has welcomed them all. They have mingled, merged, and lost in one body.<sup>106</sup>

The court that used to be the torch bearer of *suo motu* cognisance in matters of jeopardized human rights is now choosing to overlook humanitarian problems by doing little to stop human rights violation of the citizens despite series of petitions seeking justice.<sup>107</sup> First, the matters of lynchings and other hate crimes hardly reach court because of Police's reluctance to register complaints, and when they do, the accused are usually acquitted despite clear evidences but for the lack of a legal framework on hate crime.<sup>108</sup> Offenders' elevation to higher political positions make the situation worse by draining out every drop of victims' confidence in the legal system. For instance, main accused in the Malegaon blast case of 2008<sup>109</sup> who faced charges under the Maharashtra Control of Organised Crime Act and Unlawful Activities Prevention Act was a member of parliament from the BJP until 2024 and was nominated for higher positions in influential sector like defense.<sup>110</sup> Another accused of a 2015 lynching in Uttar Pradesh<sup>111</sup> who was arrested under National Security Act when the State was ruled by a democratic socialist party was freed as soon as the BJP came to power in the State in 2016. He was then appointed as a state-level leader of student wing of militia Bajrang Dal and

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<sup>104</sup> Ramachandra Guha, "An Open Letter to the Judges of the Supreme Court, With Respect, And in Anguish," *The Wire*, August 14, 2020, <https://thewire.in/law/an-open-letter-to-the-judges-of-the-supreme-court-with-respect-and-in-anguish>. See more at: "SC Refrains From Restoring 4G Services in J&K, Sets Up Special Committee," *The Wire*, May 11, 2020, <https://thewire.in/law/supreme-court-jammu-kashmir-4g-internet-special-committee>.

<sup>105</sup> In Re Kerala Education Bill 1959 1 SCR 995, ¶ 49.

<sup>106</sup> Mohammad Mohibul Haque, "The Rights of Minorities in India with Special Reference to The Role of the National Commission for Minorities" (PhD thesis, Aligarh Muslim University, Aligarh, 2009) <https://core.ac.uk/download/pdf/144523607.pdf>.

<sup>107</sup> Mahua Moitra, "The Supreme Court of India is a Court of Rights, Not of Contempt," *The Wire*, August 14, 2020, <https://thewire.in/law/the-supreme-court-of-india-is-a-court-of-rights-not-of-contempt>.

<sup>108</sup> Sudha Ramachandran, "India: Fanning the Flames of Extremism and Terror at Home," *The Jamestown Foundation* 18, no. 1 (January 2020): 7-9. <https://jamestown.org/wp-content/uploads/2020/01/TM-Jan.-14-2020-Issue.pdf?x41867>.

<sup>109</sup> In a communally incited bomb blast on 29th September 2008, at Malegaon town of Maharashtra, seven people were killed. The main accused was granted bail by the Bombay High Court in 2017 and was named a BJP MP the same year. Though, BJP has now parted ways with her.

<sup>110</sup> Ramachandran, "India: Fanning the Flames," 7-9.

<sup>111</sup> Lynching of Mohammed Reyaz in the state of Uttar Pradesh in 2015.

later elevated to district president of the mainstream BJP— both acolytes of RSS.<sup>112</sup>

Besides failing to provide justice to minorities, the lack of judicial activism in all such cases is upsetting democracy in two-fold—first it is immensely encouraging *Hindutva* elements to vilify minorities with State impunity;<sup>113</sup> second, it is curbing the dissent voiced against State authoritarianism. Having said that, the sufferings of the victims are exacerbated by endless judicial delays and absence of political will to improve their access to justice.<sup>114</sup>

However, it would be unfair to discuss the role of judicial system with pessimism alone. The Supreme Court took an active step to address hate crime in the significant case of *Tehseen Poonawalla versus Union of India and others*.<sup>115</sup> The Court issued recommendations for preventive, remedial, and punitive measures. Besides, the Court established specific guidelines for the government and law enforcement agencies to combat mob violence and promote accountability. In the absence of a robust legal framework to address hate crimes, the Supreme Court guidelines provided in the Tehseen S. Poonawalla case offer a constructive approach towards a ‘hate crime-centric’ law. The judgment is by far the most contextually appropriate judicial stance taken on mob lynching where the court described the act of mob lynching as “horrendous acts of mobocracy”. The court exhorted the Centre and State governments to enact anti-lynching laws with preventive, remedial, and punitive policies to address hate crime.<sup>116</sup> But to implement any such policy having crime data is indispensable. To properly implement the Court’s guidelines or policies, the existence of rigorous data is a precondition.

With all that is stated, what is left to help the Muslims is the ‘due course of law’. In a democratic society, citizens turn to rule of law against oppression. But the enactment of draconian laws to further marginalise a community creates more fear than faith in a democratic system. The recent legislative advancements have further ossified the mistrust. Muslim men have become the favourite targets of the State.<sup>117</sup> While the Muslim Women (Protection of Rights on Marriage) Act, 2019 not only encroaches upon the personal law of Muslims but also criminalise a civil matter. Criminal penalty of imprisonment with fine on a civil matter is a deliberate attack on the rights of Muslim men. Similarly, latest amendments to UAPA which can render any person a “terrorist” is another legislative excess intended to marginalise Muslims and

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<sup>112</sup> Mohammad Ali, “The Rise of a Hindu Vigilante in the Age of WhatsApp and Modi,” *Wired*, April 14, 2020, <https://www.wired.com/story/indias-frightening-descent-social-media-terror>.

<sup>113</sup> Ramachandran, “India: Fanning the Flames,” 7-9.

<sup>114</sup> Upendra Baxi, “Re-arming the Law,” *Indian Express*, July 21, 2017, <https://indianexpress.com/article/opinion/columns/re-arming-the-law-targeted-killings-bill-bjp-lynching-4760192>.

<sup>115</sup> *Tehseen S. Poonawalla v. Union of India*.

<sup>116</sup> M. Mohsin Alam Bhat, “The Case for Collecting Hate Crimes Data in India,” *Law and Policy Brief* 4, no. 9 (2018), accessed July 27, 2023, <https://ssrn.com/abstract=3367329>.

<sup>117</sup> Kirmani, “How Oppressed are Muslims in India?”

the dissenters by putting them behind bars for petty reasons, similar to the status quo of African Americans in the USA.<sup>118</sup> The globally criticised Citizenship Amendment Act, 2019 (CAA) is not only against the secular spirit of Constitution of India, but also a blatant attack on human rights of Muslims to render them second-class citizens.<sup>119</sup> The latest Waqf Amendment Act, 2025 is the state's intervention in the exercise of constitutional rights of Muslims by expanding government control over waqf properties leading to concerns about Muslim community autonomy over their affairs.<sup>120</sup> The Apex Court is currently hearing petitions challenging the Amendment. Though the Court is yet to issue a ruling, it has expressed deep concerns about the constitutionality of certain provisions in the Act.<sup>121</sup> There has been mass protests against these legislative overstepping across the country but the dissenters were penalised with the heavy hand of law upon them.<sup>122</sup>

Yet, howsoever low the minorities' faith might have ebbed, the belief that it is the same judicial system that once dethroned a Prime Minister for her caprices instills the hopes.<sup>123</sup> There are hopes that, though the independent courts incline towards the fashion of executive courts, they are still at a distance from collaborationist court.<sup>124</sup>

### 3. Way Forward

With that discussion on hate model and legal framework, a crucial question emerges — where can victims of such violence seek support? While the government tends to overlook the issue of hate crimes, in instances when they do respond, the typical response is, “Let the law take its own course.”<sup>125</sup> However, the obstacles that impede the law from effectively taking its course are numerous.

First of all, the police's reluctance in filing a First Information Report (FIR) means that the crime never occurred in the eyes of law though it occurred in reality. Secondly, faulty investigation or victim-blaming defeats the process of law. Still, the major obstacle is lack of an effective legislation and political responses to bill proposals regarding hate crimes. Government becomes anxious whenever there is a call to make new and specific laws for hate

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<sup>118</sup> Kirmani, “How Oppressed are Muslims in India?”

<sup>119</sup> Ramachandran, “India: Fanning the Flames,” 7-9.

<sup>120</sup> Nizamuddin Ahmad Siddiqui and Mohd Rehan, “The Dispossession of Muslim Identity in India,” *The Leaflet*, March 31, 2025, <https://theleaflet.in/religion/the-dispossession-of-muslim-identity-in-india>.

<sup>121</sup> Nizamuddin Ahmad Siddiqui, “Waqf Act and the Erosion of Muslim Rights,” YouTube, June 24, 2025, <https://www.youtube.com/watch?v=Icdh0tgFLVE>.

<sup>122</sup> Sidharth Bhatia, “The Establishment Has Sent a Hard-Core Message to Dissenters and Critics,” *The Wire*, June 25, 2019, <https://thewire.in/rights/the-establishment-has-sent-a-hard-core-message-to-dissenters-and-critics>.

<sup>123</sup> Sanjoy Ghose, “The Judge Who Unseated a Prime Minister,” *The Leaflet*, June 25, 2020, <https://theleaflet.in/equality/the-judge-who-unseated-a-prime-minister>.

<sup>124</sup> Guha, “An Open Letter to the Judges.”

<sup>125</sup> Baxi, “Re-arming the Law.”

crimes. For instance, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill (hereafter Targeted Violence Bill) of 2011 which was drafted by consolidated efforts of social activists and human rights defenders and was scrutinized by legislative officials was never passed by the parliament. Another draft concerning mob lynching is prepared by civil society with the name MASUKA — *Manav Suraksha Kanoon* (Law saving humanity) in the wake of rising hate incidents. This draft is mostly inspired by Targeted Violence Bill 2011 where hate violence is comprehensively defined as, “act or series of acts, whether spontaneous or planned, resulting in injury or harm to the person and or property, knowingly directed against any person by virtue of his or her membership of any group, which destroys the secular fabric of the nation”<sup>126</sup> The draft also defines hate propaganda, torture, sexual assault, atrocity, and creation of a hostile environment and declares them as punishable offences.<sup>127</sup> Then in 2022, parliamentarian E. T. Mahmood Basheer introduced in the lower house of parliament The Prevention Of Mob Lynching Bill. This Bill aimed to prevent mob lynching and provide adequate punishment for persons committing mob lynching with a view to instil a sense of fear among the persons who involve themselves in such a kind of actions.<sup>128</sup> Nonetheless, the government’s continuous counter-argument to these legislative attempts is — why bother enacting a new law when hate crimes can be covered through interpretation of different sections of IPC. But it is high time to recognise hate crimes like lynching as a separate offence driven by political radicalism. The history of law teaches us that crimes like lynching, stripping, communal violence and social ostracism are the result of politically licensed groups who possess impunity from the law. Hence, the answer, “Let the law take its own course” becomes feeble unless the law is reshaped.<sup>129</sup> The legislative attempt to address the hate crime through BNS in 2023, however proved to be a failed or optimistically speaking an incomplete attempt. There must be a stricter law for those who use law for their insurgent purposes. After all, law is not a means of political revenge but it is an instrument of justice and social balance.

Dr. B R Ambedkar rightly put the majoritarian bias in his words as, “Any claim for sharing the power by the minority is called communalism while monopolizing of the whole power by the majority is called nationalism. Guided by such a philosophy the majority is not prepared to allow the minorities to share political power”<sup>130</sup>

<sup>126</sup> Parliament of India, Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, tabled for consideration on July 25, 2011, section 3 (c).

<sup>127</sup> Parliament of India, Prevention of Communal and Targeted Violence Bill, ss 3, 7, 8 and 12.

<sup>128</sup> Parliament of India, The Prevention of Mob Lynching Bill, Introduced in Lok Sabha, August 10, 2022, Bill No. 209 of 2022, <https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/209%20OF%202022%20AS12122022115556AM.pdf?source=legislation>.

<sup>129</sup> Baxi, “Re-arming the Law.”

<sup>130</sup> Christophe Jaffrelot and Narendra Kumar, *Dr Ambedkar and Democracy* (OUP, 2018), 172.

#### 4. Conclusion

When a widely elected political party rejects the constitution of the State, implications can be grave for the democratic system. The majoritarian ideology has been an intrinsic source of violence in the country but the recent rise of Hindutva and Muslim oppression can have serious implications for a democratic state. Not only does it violate India's obligations under international human rights law, it can potentially result into radicalization of Muslim youth in India. The targeted violence against them can stem rebellious feelings in them which may lead them joining fundamentalist and militant groups.<sup>131</sup> Indian affiliate of one of the global jihadist groups published on the cover page of one of its magazine issues in March 2020, an image of Muslim man being thrashed up by Hindu men. It further pointed out the atrocities that Muslims are afflicted with in India and encouraged them to retaliate.<sup>132</sup> The increasing interference of the hegemonic ideology in the Indian Constitution and its prejudicing of people's outlook has concerned not only Muslims but every secular citizen.

The silence of State over social and political marginalization of Muslims has further intensified the argument of state-sponsored vigilantism and institutionalized violence against them.<sup>133</sup> If the notion of '*son of soil*' for Hindus and '*outsider*' for Muslims is a reason not enough for much hue and cry in the country, the judiciary's staggering ardor towards majority in some landmark cases, has created the notion of 'no justice' for Indian Muslims.<sup>134</sup> Rather than ensuring that the majority's desires are balanced with principles of justice in the process of amending or enacting laws, it seems that courts have at times overlooked the importance of fairness. Scholars like Wani and Khazir have noted that "it seems as if the country is still under colonial and parochial rules with no democratic and modern sense."<sup>135</sup> It is the time that India realise the importance of Constitutional values and pluralistic tolerance if it has to maintain the international reputation as the largest democracy. The erstwhile freedom struggle was not attributed to the race, religion, ethnicity or nationality of the then Indians but it was a collective rebellion against the tyranny and oppression of British<sup>136</sup> while the current struggle of India citizens is about the betrayal and unfulfilled promises like that of employment

<sup>131</sup> Ramachandran, "India: Fanning the Flames," 7-9.

<sup>132</sup> Kabir Taneja, "Islamic State propaganda in India," Observer Research Foundation, accessed June 20, 2022, <https://www.orfonline.org/research/islamic-state-propaganda-india-64715>.

<sup>133</sup> Murtaza Shibli, "Hindutva Vigilantism and Muslims Institutionalization of Violence," *Policy Perspectives* 16, no.1 (2019): 148. <https://www.jstor.org/stable/10.13169/polipers.16.1.0137>.

<sup>134</sup> Charles M Fombad, "Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa," *American Journal of Comparative Law* 55, no. 1 (January 2007): 45, <https://www.jstor.org/stable/20454564>.

<sup>135</sup> Wani and Khazir, "Discourse on Minority Rights," 12.

<sup>136</sup> Radha D'Souza, "The Conceptual World of the Ghadarites," *Journal of The Society for Socialist Studies* 13, no. 2 (October 2018): 21, 20. <https://doi.org/10.18740/ss27241>.

and development which happened to be the key points of BJP's election manifesto and led to its mass victory in Parliamentary elections.

## 5. Suggestions

While India is reeling under hate crimes, it can be solemn to realize that United States Senate took 100 years to recognise lynching as “the ultimate expression of racism in the United States” and pass a bill countering the same. More than 200 bills on lynching were quashed in U.S. Congress since the *Reconstruction Era* when the Emmett Till Antilynching Act was finally signed on March 29, 2022 by President Joe Biden. How many years will Indian parliament take to approve such a bill is concomitant to how many years will it take to recognise lynching as “a bias-motivated act of terror” and “the ultimate expression of communal hatred in India”?<sup>137</sup> The journey is indeed long.

Opportunely, the Uttar Pradesh Law Commission (UPLC) proposed a draft anti-lynching law earlier in 2019 on the lines of anti-lynching ordinance introduced by the Manipur government in 2018.<sup>138</sup> The Manipur ordinance qualifies to be the most significant legislation against hate crimes in the country. It provides the law against impunity under the name ‘derelection of duty by police officials’ holding them guilty in case they “omit to exercise lawful authority vested in them under law, without reasonable cause, and thereby fails to prevent lynching.”<sup>139</sup>

### 5.1 Suggestions for the state?

- The crime of lynching was recommended much before in the never approved Targeted Violence Bill (as discussed earlier) by the former United Progressive Alliance government but was never talked of.<sup>140</sup> The parliament should enact the same or similar legislation that prevents religious violence or discrimination on the basis of religion or ethnic identity.
- The Supreme Court in its ruling in *Tehseen Poonawalla* case<sup>141</sup> issued directives for ensuring accountability in mob violence cases. The Parliament should implement these guidelines to hold the perpetrators accountable for their act.

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<sup>137</sup> Harsh Mander, “In Hate Crime Fight, a Voice Still Feeble,” *The Hindu*, August 1, 2019, <https://www.thehindu.com/opinion/lead/in-hate-crime-fight-a-voice-still-feeble/article28775760.ece>.

<sup>138</sup> Mander, “In Hate Crime Fight.”

<sup>139</sup> Government of Manipur, The Manipur Protection from Mob Violence Ordinance, November 9, 2018, Ordinance No. 3 of 2018, <https://manipur.gov.in/wp-content/uploads/2016/05/mobviolence.pdf>.

<sup>140</sup> Amnesty International India, “Hate Crime Reports on an Alarming Rise,” 66.

<sup>141</sup> *Tehseen S Poonawalla & Ors v Union of India & Ors* (2018) 9 SCC 501.

- The Parliament should ensure impartial investigation and prosecution of the instigators of communal violence and inaction of Police in such incidents.<sup>142</sup>
- The legislature should ensure equal punishment and prosecution for all the perpetrators of the communal violence, whether a high-rank official or an influential or political person.
- The government should protect the families of victims and witnesses of the act against any sort of coercion, threats, intimidation or violence.

### 5.2 Suggestions for International community

The international community should:<sup>143</sup>

- Urge the Indian government to protect its minorities and advocate for proper investigation and FastTrack justice to the victims.
- Insist the government to openly condemn such acts of violence and warn extremist groups against their activities in order to restore faith of the minorities in the democratic system.
- Encourage civil society organisations to document hate crimes accurately and systematically according to international human rights standards.
- Encourage civil society organizations in India to monitor hate and provide direct assistance to the victims of hate violence.

Liberal democracies of today should make no compromises concerning religious diversity and its tolerance as long as it does not violate the fundamental rights of its citizens. This is a foundational principle that a democratic society is built upon. Compromising with these principles may lead to an anticipated and plausible agitation from minorities. And the reality of fundamentalist or autocratic States is no secret from the world. If the legislation makers of India fail to take legally efficient actions to combat the affliction of hate upon Muslim minorities, it is not wrong to say that the end for Gandhi and Ambedkar's 'Sovereign, Socialist and Secular' Republic is near.<sup>144</sup>

After having discussed the model of hate in India and trying to answer as many questions as possible in a study, a few questions still remain— Where do international human rights guarantor stand in this situation? Why is there a lack of international thrust on Indian government from its global cohorts? And what all will be compromised till the time we adopt antilynching laws?

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<sup>142</sup> Amnesty International India, "Hate Crime Reports on an Alarming Rise," 66.

<sup>143</sup> Amnesty International India, "Hate Crime Reports on an Alarming Rise," 69.

<sup>144</sup> Arshia Sana, "Hate Crimes Against Minorities in Contemporary India: Understanding the Model of Hate and Response of Indian State Underpinning International Human Rights Law" (LLM thesis, University of Westminster, Westminster, 2020).

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