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‘Kill Two Million of Them’: Institutionalised Hate Speech, Impunity and 21st Century Atrocities in India

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Abstract

Hate speech and incitement have been instrumental in atrocity crimes that have occurred in India, even prior to its independence. These atrocities include targeted killings of minorities based on religious and ethnic identity, and demonstrate persistent features of systematic, orchestrated violence that is fuelled by a Hindu nationalist ideology. This ideology is routinely promulgated at the highest levels of political leadership. This article traces both the historical and institutional character of hate speech and incitement in India to understand its repeated manifestation over time. Through case studies of recent violence, it considers the implications of new legal developments, technology and the COVID-19 pandemic on the character and dynamic of hate speech, incitement and atrocity violence in India. It considers key reforms and areas for accountability on which the international community could engage the government and civil society in India on the issue of hate speech and incitement to promote atrocity prevention at the domestic level.

Keywords

hate speech – incitement – India – Hindu nationalism – BJP

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1 Introduction

This article examines the issue of hate speech and incitement leading to targeted violence and atrocities in India to understand the dynamics leading to escalation, and to identify pathways for violence mitigation. Violence against minorities on the basis of religion and ethnicity has been a regular feature throughout India's modern history. The rise of the Hindu nationalist movement, and particularly the mainstreaming of the Hindu nationalist party, the Bharatiya Janata Party (BJP), has fostered a political climate that is conducive to hate speech. This hate speech has regularly transformed into calls for violent action, rioting, and pogroms through which thousands of people have experienced horrendous atrocities. India was acutely affected by the COVID-19 pandemic, with significant costs in terms of lives lost, damage to the national economy, and an overrun health system. As this article illustrates, the pandemic also exacerbated underlying social tensions, hate speech is on the rise across the country, as are the numbers of hate crimes targeting vulnerable minority groups. A recent call to 'kill two million of them [Muslims]' is an example of an overt and unchecked call from a high-profile Hindu leader to commit genocide and ethnic cleansing that is entering mainstream discourse.¹

This article starts with a historical background to contextualise the current situation of hate speech and violence against religious and ethnic minorities in India, followed by an analysis of the legal and policy framework in place concerning the regulation of hate speech and other forms of discrimination against minorities. To illustrate the dynamics and character of hate speech, incitement, and violence, the article provides case studies of the 2020 Delhi riots, the targeting of the Tablighi Jamaat during the COVID-19 lockdown in 2020, and a discussion of hate speech and violence towards Christian and ethnic minority groups in the North Eastern states.

In doing so, the article contributes to the overarching objective of this special issue by showing the wider historical, institutional, and legal context in which hate speech is enacted. The case studies demonstrate that the specific actors and trigger events through which hate speech develops into incitement and atrocities are highly contingent. However, a powerful enabling environment for hate speech leading to incitement and atrocities has been cultivated by Hindu nationalists for decades. Systematic patterns of behaviour can be mapped and identified over the long durée, and indeed intensified over the past few years with the compounding effects of new social media technologies,

1 Mujib Mashal, Suhasini Raj, and Hari Kumar, 'As Officials Look Away, Hate Speech in India Nears Dangerous Levels', *The New York Times*, 8 February 2022.

the global pandemic, and a pervasive communalist ideology propagated by leading politicians in positions of authority. Mitigating institutions, such as legal bodies and a robust judiciary, have eroded in the past decade due to increased politicisation of the courts and the introduction of discriminatory laws. A comprehensive overview of the trends in India explains why hate speech has become so dangerous, and why greater attention needs to be paid to communal violence within India from an atrocity prevention perspective.

2 Historical Background: Communal Violence in India

To understand the nature of hate speech and, in numerous cases, ensuing patterns of incitement, riots and pogroms in India, it is important to contextualise communal politics that have made religion one of the most volatile issues shaping the current political landscape. Constitutionally, India is a secular state; however, Hindus are by far the largest religious group at 80 per cent of the population. Muslims are the largest minority group at 14 per cent of the population, followed by Christians (2.3%), Sikh (1.72%), Jain (0.37%), and others/none (less than 1%).² Communal violence between Hindus and Muslims is the most prevalent, although there have been significant instances of communal violence targeted at other minorities, such as the 1984 anti-Sikh pogrom and the 2008 anti-Christian riots in Orissa state. Although with strong ideological overtones defined by Hindu nationalism, communal violence is often exacerbated by electoral politics, often the need by Hindu nationalist groups to galvanise support across its wide caste-base along religious lines.³

Historian Gayendra Pandey has argued that the politicisation of communal difference in India is a product of colonial knowledge generated through the classification practices of the British during their colonisation of Greater India.⁴ The classification of population groups along the lines of religion shaped group consciousness of communal difference that spurred nationalist movements headed by the Muslim League and the secular Indian National Congress party that were central to the creation of Pakistan as a homeland for Muslims

2 According to the most recent census data in 2011. See Census Organisation of India, 'Religion Census 2011', *Indian National Census* (2011), <https://www.census2011.co.in/religion.php>, accessed 27 January 2023.

3 Ashutosh Varshney, *Ethnic Conflict and Civic Life: Hindus and Muslims in India*. (New Haven, CT: Yale University Press, 2002); Steven I. Wilkinson, *Votes and Violence: Electoral Competition and Ethnic Riots in India* (Cambridge: Cambridge University Press, 2004).

4 Gayendra Pandey, *The Construction of Communalism in Colonial North India* (Delhi: Oxford University Press, 1992).

(including East Bengal – now Bangladesh) and India in 1947. Unprecedented communal violence between Hindus, Muslims, and Sikhs occurred during the 1947 Partition and became constitutive of the nationalist ideology that shaped the nation-building programs of both states following Partition.⁵ In the decades that followed, politicians across the political spectrum have periodically leveraged communal identities both at central and state levels to advance their political goals.⁶ The high levels of impunity within the security sector and justice system that have become hallmarks of India's communal violence today are a result of the deep politicisation of communalism during these early years.⁷

The Hindu nationalist (*Hindutva*) movement has its origins in the early twentieth-century independence movement against British colonialism. Independence activist Vinayak Damodar Savarkar developed the political philosophy of *Hindutva* in the 1920s, defining the essence of Indian national identity in the Hindu religion – it is a far-right organisation that has been backed by the voluntary paramilitary organisation Rashtriya Swayamsevak Sangh (RSS) since 1925. In the 1960s, Sangh Parivar was created as the umbrella organisation for a family of right-wing Hindu nationalist organisations in the country. Among its key institutions are the BJP (the political wing), the RSS (the paramilitary wing), the Bajrang Dal (the youth wing), and the Durga Vahini (the women's wing). They have been responsible for orchestrating and actively participating in much of the communal violence that has taken place in India over the past decades.⁸

The *Hindutva* movement rose as a significant political force in India during the 1980s and 1990s, and was accompanied by a rise in communal violence orchestrated by member organisations of the Sangh Parivar that continues to

5 Ritu Menon and Kamla Bhasin, *Borders and Boundaries: Women in India's Partition* (New Brunswick, NJ: Rutgers University Press, 1998), pp. 67–129; Gayendra Pandey, *Remembering Partition: Violence, Nationalism, and History in India* (Cambridge: Cambridge University Press, 2001), pp. 21–44.

6 Lance Brennan, 'The State and Communal Violence in UP: 1947–1992' in *Politics of Violence: From Ayodhya to Behrampada*, ed. John McGuire, Peter Reeves, and Howard Brasted (New Delhi: Sage, 1996), pp. 127–41.

7 Cecilia Jacob, 'The Politics of Protecting Religious Minorities: The State and Communal Violence in India' in Cecilia Jacob and Alistair D. B. Cook (eds.), *Civilian Protection in the Twenty-First Century: Governance and Responsibility in a Fragmented World* (New Delhi: Oxford University Press, 2016), pp. 107–26; Cecilia Jacob, 'State Responsibility and Prevention in the Responsibility to Protect', *Global Responsibility to Protect*, 7(1) 56–80 (2015).

8 John McGuire, Peter Reeves, and Howard Brasted (eds.), *Politics of Violence: From Ayodhya to Behrampada* (New Delhi: Sage, 1996); Martha Nussbaum, *The Clash Within: Democracy, Religious Violence and India's Future* (Cambridge, MA: Belknap Press of Harvard University Press, 2007).

shape the contours of modern politics and political violence today.⁹ As a sign of the formal mainstreaming of Hindu nationalist ideology in the domestic political landscape, the BJP was in government from 1998 to 2004 under Prime Minister Atal Bihari Vajpayee, and has again been in government under Prime Minister Narendra Modi since 2014.

Hate speech propagated by Hindu nationalist leaders that exemplifies their exclusionary agenda includes statements such as those by BJP and RSS leader Rajeshwar Singh that 'Muslims and Christians will be wiped out of India by December 31, 2021'.¹⁰ The use of terms such as 'wiping out' has been interpreted as a statement of intent for ethnic cleansing by observers.¹¹

Rather than denouncing this kind of hate rhetoric and diffusing inter-religious tensions, the current Prime Minister has cultivated an environment for such hate speech to flourish. In his own election speech on 1 April 2019 in Wardha, Modi stated:

Tell me, when you heard the word Hindu terrorist, did you not feel deeply hurt. In a thousand-year history there has been no instance of a Hindu committing an act of terrorism ... Brothers and Sisters, a few days ago decisions have revealed the truth. Congress' conspiracy to the country. Congress for trying to insult Hindus, of staining the basic tenants of our culture, making thousands of our country/people look smaller in front of the world ... The ones they called terrorists have awakened. The ones of our peace-loving hindu culture, the Hindus that live for brotherhood, the Hindus that love everyone in the world as their family, have been called terrorists. Joined terrorism with hindus.

The speech was intentionally divisive along religious lines,¹² and many complaints were filed to the Election Commission of India (ECI) against the speech

9 The most significant being the Bombay riots (December 1992–January 1993) in which some 900 people were killed in the wake of the destruction of Babri Masjid (mosque) – one of the most disputed sites between Muslims and Hindus, with Hindus claiming the site to be the birthplace of Hindu god Ram – and the 2002 violence in Gujarat where an estimated 2,000 mostly Muslims were killed.

10 'Muslims and Christians will be wiped out of India by December 31, 2021: BJP leader Rajeshwar Singh', Sabrang India, 14 December 2014, <https://sabrangindia.in/article/muslims-and-christians-will-be-wiped-out-india-december-31-2021-bjp-leader-rajeshwar-singh>, accessed 27 January 2023.

11 *ibid.*

12 Jeffrey Gettleman, Kai Schultz, Suhasini Raj, and Hari Kumar, 'Under Modi, a Hindu Nationalist Surge Has Further Divided India', *New York Times*, 11 April 2019, <https://www.nytimes.com/2019/04/11/world/asia/modi-india-elections.html>, accessed 27 January 2023.

for stirring majoritarian Hindu sentiment and communal passion. The ECI exonerated the Prime Minister, with one dissenting opinion (30 April 2019). *India Today* filed a Right to Information request to disclose the text of the ECI opinion; however, the ECI refused the request on the basis that ‘disclosure will endanger the life and physical safety of the person or identifies’.¹³ Such lack of accountability at the highest level of political authority has emboldened Hindu nationalists to employ polarising language, and therefore pursue the objectives of their agenda.

3 Context of Communal Divisions, Hate Speech and Violence in India

Hundreds of episodes of communal violence occur in India every year. The National Crime Records Bureau recorded over 4,500 episodes of communal or religious riots from 2016 to 2019.¹⁴ Although official records show a decrease in the number of such riots in recent years, the number of riot victims increased by 22 per cent from 2017 to 2018, indicating that these riots have become more deadly.¹⁵ Further, statistics collected by the organisation Statistica show that the number of hate crimes on the basis of caste, ethnicity or religion reported in the media have increased significantly, from eight crimes reported in 2010 to 92 reported in 2018.

Religious and communal tensions have come under intense scrutiny since the election of Modi in 2014, and accordingly the flow of information on religiously motivated incidences has been curtailed. The Ministry of Home Affairs ceased releasing annual data on the communal and religious rioting in recent years, and a number of independent databases that were tracking religiously motivated hate crimes have been shut down, including the Hate Tracker website published by the *Hindustan Times* in September 2017, with the forced resignation of the editor-in-chief occurring shortly after a meeting

13 Government of India, Right to Information Act, 2005, Section 8(1)(g), <https://rti.gov.in/rti-act.pdf>.

14 Bharath Kancharla, ‘The Intriguing Case of Data on “Communal Incidents” in India’, *Factly*, 8 November 2019, <https://factly.in/the-intriguing-case-of-data-on-communal-incidents-in-india/>, accessed 27 January 2023; Press Trust of India, ‘952 Cases of Communal, Religious Rioting in 2018–19: Govt’, *The New India Express*, 10 March 2021, <https://www.newindianexpress.com/nation/2021/mar/10/952-cases-of-communal-religious-rioting-in-2018-19-govt-2274869.html>, accessed 27 January 2023.

15 Mukesh Rawat, ‘Riots in India Are Decreasing but Becoming More Intense: NCRB Data’, *India Today*, 22 October 2019, <https://www.indiatoday.in/india/story/ncrb-crime-in-india-2017-report-rioting-cases-data-1611821-2019-10-22>, accessed 27 January 2023.

between the newspaper's owner and the Prime Minister.¹⁶ In September 2019, the award-winning Hate Crime Watch database was removed from its website *IndiaSpend*.¹⁷ Journalists and human rights advocates have also been targets of threats and intimidation for their vocal opposition to state-sponsored communal violence and impunity.¹⁸

Far from mitigating instances of inflammatory hate speech, the current BJP government has fostered an environment where hate speech is not only tolerated but also rewarded. NDTV conducted a survey of 'statements that are clearly communal, casteist, and calls to violence' made by politicians and public figures. They found that hate speech by public figures increased by 490 per cent in the first four years of BJP rule, with 90 per cent of the politicians involved being members of the BJP.¹⁹ Most of them go unpunished; some of them are even rewarded. For example, in 2016, BJP Member of Parliament from Karnataka state, Ananth Kumar Hedge was recorded as saying: 'As long as we have Islam in the world, there will be no end to terrorism. If we are unable to end Islam, we won't be able to end terrorism.' He was promoted as the Union Minister of Skill Development and Entrepreneurship in 2017 and continues to espouse far-right nationalist views through social media and public statements.²⁰

A small percentage of communal riots escalate to large-scale killings and displacement, such as the Hindu–Muslim violence in Mumbai in 1992 and Gujarat in 2002; however, there is a consistency and familiarity between these episodes in terms of the social and political dynamics through which they are mobilised. Common among these are the intensification of hate rhetoric along

16 Wire Staff, 'After Editor's Exit, Hindustan Times Pulls Down Controversial "Hate Tracker"', *The Wire*, 25 October 2017, <https://thewire.in/media/hindustan-times-hate-tracker>, accessed 27 January 2023.

17 Scroll Staff, 'FactChecker Pulls Down Hate Crime Database, IndiaSpend Editor Samar Halarnkar Resigns', *Scroll.in*, 12 September 2019, <https://scroll.in/latest/937076/factchecker-pulls-down-hate-crime-watch-database-sister-websites-editor-resigns>, accessed 27 January 2023.

18 Front Line Defenders, 'Judicial Harassment of Teesta Setalvad', 2017, <https://www.frontlinedefenders.org/en/case/judicial-harassment-teesta-setalvad>, accessed 27 January 2023; Wire Staff, 'Teesta Setalvad's Organisation Calls for Help as She Faces Threat to Personal Freedom', *The Wire*, 7 March 2018, <https://thewire.in/rights/teesta-setalvads-organisation-calls-for-help-as-she-faces-threat-to-personal-freedom>, accessed 27 January 2023.

19 Nimisha Jaiswal, Sreenivasan Jain, and Manas Pratap Singh, 'Under Modi Government, VIP Hate Speech Skyrockets – By 500%', *New Delhi Television (NDTV)*, 19 April 2018, <https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925>, accessed 27 January 2023.

20 *ibid.*

the contours of the communal divisions concretised during Partition and inflamed through extremist political ideologies. Hate speech spreads rumours to instil fear among communities during periods of tension, followed by a systematic mobilisation of populations to participate in riots by local criminal networks. These events are often in the wake of a triggering event, such as the desecration of a holy site such as a temple or mosque (real or orchestrated) or an assassination of a leading religious figure. Many of these riots, or acts of communal violence, have transformed into pogroms as mob leaders exploit the popular unrest to engage in targeted violence.²¹

Major episodes of communal violence have caused the death of hundreds, in some cases thousands of people, such as the riots in Ahmedabad in 1969, the anti-Sikh riots across India in 1984, the Bhagalpur riots in 1989, the Mumbai riots in 1992 following the destruction of the Babri Masjid in Ayodhya, and the Gujarat riots in 2002. The official death toll of each event sits between 1,000 and 3,000. Tens of thousands of people have been displaced during these periods, and thousands of homes, businesses, and places of worship have been destroyed. In addition to targeted killings, victims of communal violence suffer from brutal sexual violence, including the gang rape of women and children and destruction of foetuses in pregnant women, and the mutilation, torture, and burning of women and children who have been raped.²²

Prominent scholars who have written on communal violence in India have, at times, documented the genocidal logic operating during periods of extreme communal violence when the direct targeting, torture, killings, and forced displacement of populations according to their religious or ethnic identities were defining features of the violence.²³ Despite prosecution of a small number of individuals accused of specific attacks, there is an overall trend of persistent

21 Ward Berenschot, *Riot Politics: Hindu-Muslim Violence and the Indian State* (New York: Columbia University Press, 2011).

22 Mohammad Ali, 'Gang-Rape Stokes Tensions in Muzzafarnagar', *The Hindu*, 5 November 2013; Brass, *Forms of Collective Violence*; Martha Nussbaum, 'Rape and Murder in Gujarat' in Amrita Basu and Srirupa Roy (eds.), *Violence and Democracy in India* (Calcutta: Seagull Books, 2007); Nussbaum, *The Clash Within*; Raj K. Raj, 'UP Riots: Rape Victims Tell Their Tales', *Hindustan Times*, 5 January 2014; and personal interview by Cecilia Jacob with human rights activist seeking justice for victims of the 2008 Kandhamal violence in Orissa, India, 2012.

23 Amrita Basu and Srirupa Roy, 'Beyond Exceptionalism: Violence and Democracy in India', in Amrita Basu and Srirupa Roy (eds.), *Violence and Democracy in India* (Calcutta: Seagull Books, 2007), pp. 1–35; Brass, *Forms of Collective Violence*; Nussbaum, 'Rape and Murder in Gujarat', pp. 44–51.

impunity, notably for security forces, and the absence of meaningful accountability and reconciliation mechanisms for the populations affected.²⁴

Police in India are often complicit in communal violence, either through actively aiding the violence (such as providing weapons), committing acts of violence themselves, or abetting the violence on orders by senior officials. High levels of impunity for political leaders, at both central and state levels, and police units who engage in aiding or abetting communal violence continue to undermine the performance of the security sector in India at protecting civilians on an impartial basis from religious and other identity-based violence.²⁵ As the three case studies discussed below demonstrate, the historical impunity exercised by state security forces has only deepened since 2014.

In addition to national political cleavages, there are a number of explanations for the persistence of communal violence in India. First is the presence of 'institutionalised riot systems', through which political elites mobilise networks to orchestrate 'riots' by spreading rumours and instigating violence that appear spontaneous. The production of riots is used to shape the trajectory of local politics, and they are an integral aspect of political life in a number of Indian cities where communal tensions are endemic.²⁶

Second, a direct correlation between communal violence and electoral politics in India has also been found through quantitative studies, and scholars have argued that riots help to galvanise Hindu constituencies that are divided by caste conflict around a homogeneous Hindu identity.²⁷ Finally, other socio-political factors that account for the consistent reoccurrence of communal violence in India include the mobilisation of communal difference in day-to-day routine political transactions;²⁸ variations in the level of civic engagement across communal lines;²⁹ and historical impunity for policing

24 For a detailed account of the justice, see Priti Gulati Cox, 'Fifteen Years after the 2002 Gujarat Pogrom, the Fight Continues for Accountability and Justice Continues', *Countercurrents*, 1 March 2017, <https://countercurrents.org/2017/03/fifteen-years-after-the-2002-gujarat-pogrom-the-fight-for-accountability-and-justice-continues/>, accessed 27 January 2023.

25 Zoya Hasan, 'Mass Violence and the Wheels of Indian (In)justice', in Amrita Basu and Srirupa Roy (eds.), *Violence and Democracy in India* (Calcutta: Seagull Books, 2007), pp. 198–222; Taylor C. Sherman, *State Violence and Punishment in India* (Abingdon: Routledge, 2010); K. S. Subramanian, *Political Violence and the Police in India* (New Delhi: Sage, 2007).

26 Paul Brass, *The Production of Hindu–Muslim Violence in Contemporary India* (New Delhi: Oxford University Press, 2003).

27 Ornit Shani, *Communalism, Caste and Hindu Nationalism: The Violence in Gujarat* (Cambridge: Cambridge University Press, 2007); Wilkinson, *Votes and Violence*.

28 Berenshot, *Riot Politics*; Gayendra Pandey, *Routine Violence: Nations, Fragments, Histories* (Stanford: Stanford University Press, 2006).

29 Varshney, *Ethnic Conflict and Civic Life*.

and law enforcement complicity in communal violence and other widespread human rights violations such as torture and extrajudicial killings.³⁰

Despite the large body of evidence showing the complicity of India's political and security establishment in communal violence, India has been subjected to little accountability for the persistent levels of religious persecution and violence. India's record has been scrutinised through the Universal Periodic Review (UPR) process within the Human Rights Council (HRC) where the problem of hate speech, violence against religious, tribal, and Dalit communities and restrictions on religious freedom has been routinely raised.³¹ However, India has persistently disregarded the recommendations of the HRC, and the HRC's lack of enforcement mechanisms to ensure that India follows through on its human rights obligations under international law reinforces the absence of a meaningful recourse to accountability of the state at the international level.

4 Legal Framework

4.1 *Constitutional Status of Hate Speech in India*

The provisions dealing with hate speech are incidental to the provisions dealing with state authority, law and order, and infringement of individual liberties as enshrined in the Constitution. Accordingly, in the Indian Constitution, the right to freedom of speech and expression under Article 19 is enshrined in Part III, which pertains to the fundamental rights of the individual. This right is subject to 'reasonable restrictions' as given in clauses (2) to (6) of Article 19 which subject the right to restriction on grounds of: 'sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence'.

At the outset it may be noted that within the Constitution no separate section deals with hate speech, instead different laws and penal articles deal

30 Beatrice Jauregui, 'Law and Order: Police Encounter Killings and Routinized Political Violence' in Isabelle Clark-Decés (ed.), *A Companion to the Anthropology of India* (West Sussex: Wiley-Blackwell, 2011), pp. 371–388; Sherman, *State Violence and Punishment in India*; Rachel Wahl, 'Policing, Values, and Violence: Human Rights Education with Law Enforcers in India', *Oxford Journal of Human Rights Practice*, 5(2) 220–242 (2013).

31 The most recent recommendations to India in which these themes are addressed are found in UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: India*, A/HRC/36/10, 17 July 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/193/56/PDF/G1719356.pdf?OpenElement>, accessed 27 January 2023.

with offences which may be understood as hate speech. Thus, as the Law Commission of India notes, hate speech is not defined in the Constitution.³² The 267th report of the Law Commission of India was an outcome of the directives issued by the Supreme Court of India (SCI) to look into the definition, if necessary, of hate speech under the Constitution.³³ As the Commission in its report subsequently noted, the concern that the SCI has with defining hate speech is the restriction and curtailment of free speech which may result from misuse of such legislation or definition.³⁴ Specifically, the SCI has held that in order to breach the limits of Article 19(1) a differentiation must be made 'between discussion and advocacy from incitement', and further that incitement must amount to incitement to violence,³⁵ otherwise restrictions would not apply.

In its report, the Law Commission annexed a proposed Criminal Law (Amendment) Bill, 2017, recommending an amendment of the Penal Code to include two new provisions to address hate speech, which it defined as: 'incitement to hatred primarily against a group of persons defined in terms of race, ethnicity, gender, sexual orientation, religious belief and the like'. Thus, 'hate speech is any word written or spoken, signs, visible representations within the hearing or sight of a person with the intention to cause fear or alarm, or incitement to violence'.³⁶

The Commission proposed to add two sections – 153C (prohibiting incitement to hatred) and 505A (causing fear, alarm, or provocation of violence in certain cases) – to the Indian Penal Code and make the necessary changes in the Criminal Procedure Code. The proposal included punishments of limited jail terms and a fine.³⁷ To date, however, the recommendations of the Commission have not been accepted.

For the purposes of this article, we note that the following legislation penalises hate speech:

The Indian Penal Code, 1860 (IPC)

The IPC contains provisions which deal with deliberate acts intended to outrage the feelings of any community so as to incite violence or to

32 B. Chauhan, G. Narayana Raju, S. Chandra, S. Singh, S. Sivakumar, and R. R. Tripathi, 'Hate Speech', *Law Commission of India Report*, no. 267 (2017), p. 5, chrome-extension://efaidnbnmnibpcjpcglclefindmkaj/http://www.latestlaws.com/wp-content/uploads/2017/10/Law-Commission-Report-No.-267-Hate-Speech.pdf, accessed 27 January 2023.

33 *ibid.*, p. ii.

34 *ibid.*, p. 9.

35 *ibid.*, p. 13.

36 *ibid.*, p. 49.

37 *ibid.*, pp. 52–53.

create animosity, based on grounds which include religion. (Sections 153A, 295A, 298, 505(1) and (2)). It also deals with provisions which penalise acts (including speech) prejudicial to national integration (i.e., sedition). (Sections 124A, 153B)

The Representation of The Peoples Act, 1951 (RPA)

This Act deals with elections, and the specific provisions under Sections 8, 123(3A), and 125 that prohibit and result in disqualification of people indulging in electoral malpractice on the grounds of the illegitimate use of freedom of expression to create enmity on grounds which include religion, race, caste etc.

The Code of Criminal Procedure, 1973 (CrPc)

Section 95 empowers the state to penalise and forfeit publications prosecutable under the above provisions of the IPC.

Sections 107 and 144 empower the administration to censor or prevent a breach of peace or disturbance of the public order on account of offences and acts which may include or occur on account of hate speech.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

'Section 3. Punishment for offences of atrocities (1): Whoever not being a member of a Scheduled Cast or a Scheduled Tribe,-

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.'

4.2 *Draft Prevention of Communal Violence Bill*

Communal violence continues to be highly politicised in India. In the lead up to the 2014 general elections, the United Progressive Alliance, led by the Congress party, attempted unsuccessfully to reintroduce the Draft Prevention of Communal Violence (Access to Justice and Reparations) Bill to the Upper House in the last parliamentary session, inflaming political debate. The original Bill, drafted by secular civil society actors and adapted without their approval, was introduced into the Lower House of parliament in 2011 where it was rejected. The BJP is ideologically opposed to the Bill, and their position is defended on the basis that the definition of 'majority' communities in India discriminates against Hindu populations. The BJP also argued that the Bill would enable the central government to encroach on state-level jurisdiction for policing and that provisions in the existing Constitution, Criminal Code,

and Penal Code provide adequate protection for populations without requiring further legislation.³⁸ Secular activists rejected the original Bill, arguing that the changes made to the text were too ambiguous and that it was too draconian given the heightened power it allocated to the central government to intervene in states.³⁹

India experienced violent communal riots in Muzzafarnagar in the swing state of Uttar Pradesh in September 2013, where there was a tardy police response, and over 50,000 people were displaced. The event provided the impetus for the then ruling Congress party to reintroduce the Bill in the last sitting of parliament before the election in December 2013. The revised 2013 Bill contained provisions to address deficiencies in the Constitution, the Penal Code, and the Criminal Code by offering additional protections to religious and other minority communities from persecution, by providing compensation and rehabilitation rights for victims, and by including penalties for district-level officials. The revised version also removed a clause that gave the central government additional powers to intervene in state jurisdictions during communal violence, and enhanced the authority of the National Human Rights Commission. Despite the persistence of communal tensions throughout the country, the draft bill was rejected in parliament, and was removed from the agenda after the election of the BJP to government in 2014.

4.3 *Discriminatory Legal Provisions and Policies under the BJP Government*

Since the BJP came to power in 2014, and notably after the 2019 election in which the BJP won a majority government, a number of discriminatory policies and laws have been enacted. These are widely interpreted to target minorities, most notably Muslim populations, but also other non-Hindu minority religions and ethnic minorities. These moves by the BJP have signalled their support for Hindu nationalist groups and has created a political space in which hate speech has flourished and hate crimes have burgeoned across the country. The most controversial provisions are summarised below, before turning to the case studies.

4.3.1 Citizenship (Amendment) Act, 2019 (CAA)

The Citizenship Amendment Bill was passed in December 2019. The amendment provides a pathway for illegal migrants from six different religions,

38 Vinay Kumar and Smriti Kak Ramachandran, 'Bill on Communal Violence Invites Strident Debate', *The Hindu*, 6 December 2013.

39 Javed Anand, 'Targeting the Lawbreakers', *Economic and Political Weekly*, 66(34) 19–21 (2011).

Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, from Afghanistan, Bangladesh, and Pakistan, who have fled their country to escape from religious persecution. However, the Bill is the first to legislate exclusionary religious qualifications for defining persecution and protecting minorities. The exclusion of Muslims has been especially controversial, as the Bill has been seen to directly target Muslims from gaining citizenship in India, whereby persecuted Muslims in the region⁴⁰ are denied the same pathways for formal citizenship. Furthermore, those opposed to the CAA argue that it violates Article 14 of the Indian Constitution that guarantees the right to equality and undermines India's secular status. Protests against the CAA were the major impetus for the 2020 Delhi riots examined below and are evidence of increased religious polarisation instigated by the BJP government since it secured a majority government in the 2019 general election.

4.3.2 National Register of Citizens

The rollout of the National Register of Citizens (NRC) in the state of Assam in the North Eastern Region of India left millions excluded from the formal register, particularly poor citizens who lacked formal registration documents, or those with minor irregularities in their documentation who were designated as 'doubtful citizens'.⁴¹ The precarious status of these populations raised international concerns that alongside rising hate speech against minorities in Assam, the NRC process would 'exacerbate the xenophobic climate while fuelling religious intolerance and discrimination in the country'.⁴² United Nations experts not only challenged the legality of the practice, but also called on the Indian government 'to take resolute action to review the implementation of the NRC and other similar processes in Assam and in other states, and to ensure that they do not result in statelessness, discriminatory or arbitrary deprivation or denial of nationality, mass expulsion, and arbitrary detention'.⁴³

The NRC, if implemented nationwide in tandem with the CAA, would create a tenuous situation for millions of Muslims who would have to provide legal

40 Such as Shia, Balochi, and Ahmadiyya Muslims in Pakistan and Hazaras in Afghanistan who face persecution, but also persecuted Rohingya Muslims from Myanmar and Tamils from Sri Lanka.

41 United States Commission on International Religious Freedom (USCIRF), 'India: USCIRF – Recommended for Countries of Particular Concern (CPC)', in *Annual Report* (Washington, DC: USCIRF, 2020), p. 21.

42 Ahmed Shaheed, Fernand de Varennes, and E. Tendayi Achiume, 'UN Experts: Risk of Statelessness for Millions and Instability in Assam, India', OHCHR, 3 July 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24781&LangID=E>, accessed 27 January 2023.

43 *ibid.*

documentation proving their Indian citizenship, in a country where the system of birth registrations and formal documentation is not reliable.

4.3.3 Jammu and Kashmir Media Policy

In August 2019, with the support of the BJP and other right-wing political parties, the government of India stripped Muslim-majority Jammu and Kashmir of its autonomy granted under Article 370 of the Indian Constitution. In a continuation of policies that target Muslim populations, the government cited security reasons (countering foreign terrorism) as a rationale for taking federal control of the long-disputed region. The government imposed a curfew, cut communications, deployed large numbers of security forces to the region, and restricted the freedom of movement and assembly. The government arrested Kashmiri politicians and religious leaders. Despite efforts to challenge the government actions through the Supreme Court, and international concern over the restriction of freedom and access to information, the government of India succeeded in changing the status of the region into two Union Territories.

4.3.4 Cow Protection

Many states in India already have laws that criminalise the slaughter of cows, considered sacred in the Hindu religion. While the issue of cow protection is longstanding and divisive, it has become particularly prominent through the BJP's leadership and RSS activism. Vigilante groups of self-proclaimed 'cow protectors' have mobilised campaigns of violence, targeting Muslims, Christians, and Dalits suspected of eating beef, slaughtering cows, or transporting cattle for slaughter.⁴⁴ According to the US Commission on International Religious Freedom: 'Since the BJP came to power in 2014, there have been over 100 attacks, amounting to over 98 percent of such attacks since 2010. Lynching victims, rather than the perpetrators, are often arrested under these laws.'⁴⁵

These figures show both an upward trend in the mobilisation of hate crimes through inflammatory rhetoric, backed by political ideology of the far-right BJP nationalist agenda, combined with an environment of widespread impunity for perpetrators, and for police groups that have been unwilling to

44 Human Rights Watch (HRW), 'India: "Cow Protection" Spurs Vigilante Violence', News Release, 27 April 2017, <https://www.hrw.org/news/2017/04/27/india-cow-protection-spurs-vigilante-violence>, accessed 27 January 2023; USCIRF, 'India', p. 21.

45 USCIRF, 'India', p. 21.

intervene to halt assaults on victims, or have themselves been complicit in acts of violence.⁴⁶

4.3.5 Anti-Conversion Laws

The Indian Constitution protects the right to 'propagate' one's religion (Article 25); however, since the 1960s, and increasingly since 2000, numerous states have moved to enact laws that criminalise forced conversions of religion (known as freedom of religion laws). These laws have been promoted by Hindu nationalist groups, and the implementation of the laws has focused on the conversion of Hindus to other religions, primarily Christianity and Islam. Therefore, where these laws are controversial in practice is in the default acceptance that conversion into Hinduism is a natural progression for the national identity and constitution of India, and the use of such laws to restrict the religious practices and freedoms of religious minorities in the country. As such, the laws have been used to cause intimidation and fear among religious minorities, and also non-governmental organisations whose activities are closely scrutinised to ensure they are not carrying out proselytisation.⁴⁷ The US Commission on International Religious Freedom reports that:

Hindutva groups pursue mass conversions through ceremonies known as *ghar wapsi* (homecoming), without interference from authorities. Empowered by anti-conversion laws and often with the police's complicity, Hindutva groups also conduct campaigns of harassment, social exclusion, and violence against Christians, Muslims, and other religious minorities across the country. Following attacks by Hindutva groups against religious minorities for conversion activities, the police often arrest the religious minorities who have been attacked.⁴⁸

The ideological rejection of conversion to any other religion than Hinduism is not only enshrined in the laws of some ten states across India, but also manifested in the nature of hate speech targeted at religious minorities. Through

46 For evidence of cooperation between authorities and vigilante groups, the inadequacy of judicial processes for perpetrators of such violence, and the targeting of those who publicly campaign against the cow protection movement, refer to the report from Human Rights Watch, 'India: "Cow Protection" Spurs Vigilante Violence'.

47 For a fuller discussion, see USCIRF, 'Limitations on Minorities' Religious Freedom in South Asia', USCIRF Special Report, November 2018, <https://www.uscirf.gov/sites/default/files/Limitations%20on%20Minorities%20Religious%20Freedom%20in%20South%20Asia.pdf>, accessed 27 January 2023.

48 USCIRF, 'India', p. 21.

vitriolic social media slogans, popular protests, and Hindu nationalist political campaigns, the anti-Muslim campaign 'love-Jihad' perpetuates false claims that Muslim men intentionally lure Hindu girls into romantic relations so that they will marry and convert to Islam.⁴⁹ In November 2020, the state of Uttar Pradesh passed the Prohibition of Unlawful Religious Conversion Ordinance, giving the state effective control over any decision to convert. The law has been used to harass, separate interfaith married couples, and arrest individuals suspected of breaching the law.⁵⁰

The remainder of this article turns to several case studies through which hate speech and incitement to violence have catalysed targeted violence and human rights violations against religious and ethnic minorities in India. Importantly, it shows the complicity and impunity of authorities and policing in aiding and abetting communal violence, the operation of genocidal logics in violence, and the elevated role of individual influencers in stoking communal tensions through real-time and extensive use of social media platforms.

5 Delhi Riots

The violence in Delhi which took place from 23 to 27 February 2020 came about as fallout from the protests against India's Citizenship (Amendment) Act which the Muslim community perceived to be aimed at them.⁵¹ The following case study is divided into four sections, the first deals with the extant provisions in the Indian Constitution dealing with hate speech, the second deals with the hate speech issued by various figures before the violence spread including the speech which triggered the violence, and the third deals with the use of social media to mobilise and incite violence by examining the video of Ragini Tiwari who arrived at the main scene of violence. A concluding section notes the observations from the case study.

49 Ghazala Wahab, 'How "Love Jihad" Went from being Propaganda to Policy', *The Indian Express*, 15 April 2021, <https://indianexpress.com/article/opinion/columns/how-love-jihad-went-from-being-propaganda-to-policy-7273946/>, accessed 27 January 2023.

50 Geeta Pandey, "'Love Jihad': What a Reported Miscarriage Says about India's Anti-conversion Laws', *BBC News*, 17 December 2020, <https://www.bbc.com/news/world-asia-india-55314832>, accessed 27 January 2023.

51 Jayshree Bajoria, 'Shoot the Traitors: Discrimination against Muslims under India's New Citizenship Policy', Human Rights Watch, 9 April 2020, <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>, accessed 27 January 2023.

5.1 *Context: Continuum of Violence*

This section uses data from the Delhi Minorities Commission (DMC) fact-finding committee report⁵² and alternative news media reports on the Delhi riots of 2020 which took place on 23 February and continued unabated for the next few days. These sources highlight how violence was triggered by hate speech⁵³ widely disseminated over social media targeting the Muslim minority in India's capital coinciding with the Delhi Assembly elections. What these reports identify is the way in which the government machinery both failed to respond appropriately and was in many ways complicit in the outbreak of violence resulting from hate speech.⁵⁴ Furthermore, social media also played a significant role in the mobilisation of people and incitement of communal violence, primarily by way of live broadcasts and large-scale dissemination of hate speech.⁵⁵ Mass protests against India's controversial Citizenship (Amendment) Act (CAA) were painted by the ruling dispensation as anti-national (read anti-Hindu) and ably assisted by the mainstream media which amplified government narratives and fuelled communal hatred. The violence was preceded by hate speeches by members of the ruling BJP party who were campaigning for the Delhi elections. The Election Commission had already censored and flagged two star-campaigners for violation of the Model Code of Conduct.⁵⁶ These speeches and precedents of violence should have indicated the tense and combustible atmosphere surrounding the anti-CAA protests and ideally led the government in Delhi to set up countermeasures and safeguards.

5.2 *Build-up: 'Goli Maro Saalon Ko'*

The slogan 'Goli Maro Saalon Ko' became associated with all incidents of violence triggered by hate speech and inflammatory media coverage of

52 M. R. Shamshad, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', (New Delhi: Delhi Minorities Commission, Government of NCT of Delhi, 2020), <https://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>, accessed 27 January 2023.

53 *ibid.*, pp. 26–29 and 32.

54 *ibid.*, pp. 99–103.

55 Sagar, 'Delhi Violence Unmasked: Part One', *The Caravan*, 1 March 2021, <https://caravanmagazine.in/politics/part-one-how-rss-bjp-members-invoked-hindu-identity-to-mobilise-hindutva-mobs-at-maujpur>, accessed 27 January 2023; Sagar, 'Delhi Violence Unmasked: Part Two', *The Caravan*, 1 March 2021, <https://caravanmagazine.in/politics/part-two-how-modi-speeches-fomented-hate-aided-hindutva-mobilisation-against-anti-caa-protesters>, accessed 27 January 2023; Sagar, 'Delhi Violence Unmasked: Part Three', *The Caravan*, 1 March 2021, <https://caravanmagazine.in/politics/how-bjp-and-youth-wing-bjym-used-delhi-elections-to-mobilise-hindutva-mobs>, accessed 27 January 2023.

56 Shamshad, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', p. 31.

anti-government and anti-CAA protests.⁵⁷ The violence can be mapped on a continuum stretching from police brutality against students of JMI University⁵⁸ to individual acts of violence perpetrated by pro-CAA individuals around the protest site at Shaheen Bagh,⁵⁹ which eventually escalated into a full-scale pogrom in the aftermath of inflammatory speeches given in the course of the Delhi election campaigning. The general contours of campaigning especially by BJP revolved around the juxtaposition of anti-CAA protesters as Pakistanis against pro-CAA government supporters as patriotic nationalists. Kapil Mishra continued to tweet aggressively during the campaign including likening the election to an India-Pakistan cricket match as well as accusing the opposition of creating 'mini Pakistans' in the form of Shaheen Baghs around the capital and the rest of the country.⁶⁰ He further alleged that 5 *lakh* rupees were being given as a bounty to assault police officers and indulge in anti-CAA protests.⁶¹ Multiple Union ministers including Union Home Minister Amit Shah kept issuing statements in the same frame resulting in an acute atmosphere of polarisation.

On 27 January 2020 in an election rally, the Home Minister of India, Amit Shah, asked the attendees to press the voting button with such ferocity that the protesters at Shaheen Bagh would 'feel the current'. Shah said: 'Your vote to BJP candidate will make Delhi and the country safe and prevent thousands of incidents like Shaheen Bagh.'⁶²

On 28 January 2020, in a televised interview, Member of Parliament from the BJP, Parvesh Verma, said the following with reference to Muslim males:

The people of Delhi know that the fire that raged in Kashmir a few years ago, where the daughters and sisters of Kashmiri Pandits were raped ... caught on in UP, Hyderabad, Kerala, the same fire is raging in a corner in Delhi. Lakhs of people gather there. This fire can reach the residences of Delhi anytime. People of Delhi will have to decide wisely. These people

57 Bajoria, 'Shoot the Traitors'.

58 *ibid.*

59 Shamsah, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', pp. 29–30.

60 NDTV, "'India vs Pakistan': BJP Leader Kapil Mishra Tweets on Delhi Polls', YouTube, 24 January 2020, <https://www.youtube.com/watch?v=gZbcK5Ez-zA>, accessed 27 January 2023.

61 *ibid.*

62 Rohini Chatterji, 'Press Button with Such Anger That Shaheen Bagh Feels Current, Says Amit Shah', *Huffington Post*, 26 January 2020, https://www.huffpost.com/archive/in/entry/delhi-assembly-elections-2020-amit-shah-shaheen-bagh_in_5e2e62d9c5b67d8874b4f4d7, accessed 27 January 2023.

will enter your houses, rape your sisters & daughters, kill them. There's time today, Modi ji & Amit Shah won't come to save you tomorrow...⁶³

On 29 January 2020, Tarun Chugh, National Secretary, BJP, tweeted:

We will not let Delhi become Syria and allow them to run an ISIS-like module here, where women and kids are used. They are trying to create fear in the minds of people of Delhi by blocking the main route. We will not let this happen. (We will not let Delhi burn). #ShaheenBaghKaSach.⁶⁴

These events culminated with a call to open violence in the campaign by one of the Union ministers, Anurag Thakur. Thakur's speech on 20 January 2020 openly advocated shooting the traitors of the country and equated opposition parties and anti-CAA protesters with traitors who support Pakistan.⁶⁵ In the speech he repeatedly asks the crowd 'Desh ke Gaddaron ko?' [the traitors of the nation?] to solicit the response from the crowd, to which they obliged him by saying 'goli maaro saalon ko' [shoot those scoundrels].⁶⁶ He shared the podium with other members of the party and another Union minister, Giriraj Singh. The Election Commission sent warning notices and eventually struck Thakur and another fellow party member from the campaign roster in Delhi.⁶⁷

63 FE Online, 'Delhi Election 2020: BJP MP Says Shaheen Bagh Will be Cleared in an Hour if BJP Comes to Power', *Financial Express*, 28 January 2020, <https://www.financialexpress.com/india-news/delhi-election-2020-bjp-mp-says-shaheen-bagh-will-be-cleared-in-an-hour-if-bjp-comes-to-power/1837215/>, accessed 27 January 2023.

64 PTI, 'Won't Allow Delhi to become Syria, Says BJP Leader Tarun Chugh on Shaheen Bagh Protest', *National Herald*, 30 January 2020, <https://www.nationalheraldindia.com/india/wont-allow-delhi-to-become-syria-says-bjp-leader-tarun-chugh-on-shaheen-bagh-protest>, accessed 27 January 2023; ANI, 'Shaheed Bagh Means Shaitan Bagh: BJP's Tarun Chugh', *Asian News International*, 30 January 2020, <https://www.aninews.in/news/national/politics/shaheen-bagh-means-shaitan-bagh-bjps-tarun-chugh20200130115030/>, accessed 15 February 2022.

65 NDTV, 'Prime Time with Ravish: "Goli Maaro" Slogans at Union Minister Anurag Thakur's rally', YouTube, 27 January 2020, 1:10–1:48. <https://www.youtube.com/watch?v=indq79y1ar4>, accessed 27 January 2023; *India Today*, 'Gun Down Traitors of Country: Anurag Thakur's Open Provocation Caught on Camera', YouTube, 28 January 2020, https://www.youtube.com/watch?v=6u9P1j_WopU, accessed 27 January 2023; Shamshad, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', p. 27.

66 *ibid.*

67 *India Today*, 'EC Cracks Whip against BJP Leaders' Hate Speech against Anti-CAA Protesters in Delhi', YouTube, 30 January 2020, <https://www.youtube.com/watch?v=7A37uTuyRxY>, 27 January 2023.

5.3 *Trigger: Kapil Mishra*

The immediate trigger for the violence was the following speech given by Kapil Mishra on 23 February wherein he threatened to take the law into his own hands if the Delhi police failed to clear the roads of anti-CAA protesters. Mishra had mobilised a crowd via live broadcast on social media and had them assemble in the Maujpur area of Delhi near the sit-in site of anti-CAA protesters and proceeded to give the speech.⁶⁸

This is what they wanted. This is why they blocked the roads. That's why a riot-like situation has been created. From our side not a single stone has been pelted. DCP is standing beside us. On behalf of all of you, I am saying that till the time [US President] Trump goes back [from India], we are going to go forward peacefully. But after that, we will not listen to the Police if roads are not cleared after three days. By the time Trump goes, we request the Police to clear out Jafrabad and Chaand Bagh. After that, we will have to come on the roads. Bharat mata ki jai! Vande Mataram! [Victory to mother India!⁶⁹ Long live the motherland!]⁷⁰

Within a few hours of the speech, systematic and targeted violence took place at various localities in Delhi's North-East district, beginning in the area threatened in the speech itself.⁷¹ What is significant in this case is that while giving the speech he was flanked on his right by the Delhi police's Deputy Commissioner of Police, as visible in the video, and though existing provisions allowed the police to censor the speech and place him in preventive detention, no such action took place. Further, the charge-sheet filed by the police fails to mention these hate speeches, especially the one given by Kapil Mishra. The High Court also noted this strange occurrence and sought clarification on the matter from

68 Shamshad, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', p. 30.

69 In right-wing iconography India is conceptualised as a mother goddess.

70 India Today Web Desk, 'Won't Listen after 3 Days: Kapil Mishra's Ultimatum to Delhi Police to Vacate Jafrabad Roads', *India Today*, 23 February 2020, <https://www.indiatoday.in/india/story/won-t-listen-after-3-days-bjp-kapil-mishra-ultimatum-to-delhi-police-to-vacate-jafrabad-chand-bagh-roads-1649271-2020-02-23>, accessed 27 January 2023; Wire Staff, 'BJP's Kapil Mishra Has Issued an "Ultimatum" to the Delhi Police. But Who Is He?' *The Wire*, 2 February 2020, <https://thewire.in/communalism/kapil-mishra-delhi-bjp>, accessed 27 January 2023; Mojo Story, 'Kapil Mishra among These 4 Videos Delhi High Court Made Police Watch on Hate Speeches by Politicians', YouTube, 28 February 2020, <https://www.youtube.com/watch?v=MlRcLjP9o68>, accessed 27 January 2023.

71 Shamshad, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', pp. 33–67, 99–101.

the Delhi police and central government.⁷² This points us towards another peculiarity in this case, wherein because Delhi is the National Capital Territory and not a fully-fledged state, the law enforcement falls under the control of the Union Home Ministry and not the elected Delhi government. Thus, in relation to the Delhi riots, malpractice and a nexus between the central executive and law enforcement in Delhi seem highly probable.

5.4 *Incitement and Mobilisation: Medium and Message in the Delhi Riots*

Other than Kapil Mishra, many other individuals also began issuing threats and polarising speeches over live broadcasts on social media. Among them, the case of Ragini Tiwari, a volunteer BJP worker, is pertinent.⁷³ What is significant in this case is that other than just issuing speeches she joined the pro-CAA Hindu factions and began mobilisation on the ground, streaming it on live broadcast over Facebook. As with Kapil Mishra, she also is not mentioned in the charge-sheets of the Delhi police. Below is the transcript of one such broadcast from Maujpur in North-East Delhi wherein she calls for the mobilisation of Hindus and incites the crowd to violence:

Aree Delhi Police lath Bajao Hum thumare Saath Hain. Aree mote mote lath bajao hum tumhare saath hain. Zaroorath padi toh hume bulao hum tumhare saath hain. Aree Kya hua? Kya Hua? Jo bi gaddar hai Kat dalo usko. Katt dalo. Ye Bheemti hai kya? Kon Hai be Tu? Boht Hua Sanatan par var. Ab nahi sahenge var. Arr par ki ladai, Sabhi sanatani bahar aao. Maro ya Mar dalo, badh mai dekhi jayegi. Boht hua. Khun na Khola Khun nahi wo pani hai.⁷⁴

72 Live Law (@LiveLawIndia), 'When you've registered FIRs for damages to property, why aren't you registering it for these speeches', Twitter, 26 February 2020, 9:42 p.m., <https://twitter.com/LiveLawIndia/status/1232616828045643776>, accessed 27 January 2023; Shamshad, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', p. 32.

73 Vijayta Lalwani, 'Who Is Ragini Tiwari Whose Video Threatening Protesting Farmers Has Gone Viral?' Scroll.in, 13 December 2020, <https://scroll.in/article/981110/who-is-ragini-tiwari-whose-video-threatening-protesting-farmers-has-gone-viral>, accessed 27 January 2023.

74 The video of Ragini Tiwari was shared by fact-checking handles on Twitter including this one by Mohammed Zubair (@zoo_bear), 'Here is the video of Ragini Tiwari', Twitter, 18 July 2020, 5:24 p.m., https://twitter.com/zoo_bear/status/1284388654077493248, accessed 27 January 2023; see also APB News, 'Delhi Violence: Ragini Tiwari Spews Poison, Instigates Riot through Social Media', 28 February 2020, <https://www.abplive.com/news/india/delhi-violence-ragini-tiwari-controversial-social-media-video-1314399>, accessed 27 January 2023; Lalwani, 'Who is Ragini Tiwari whose video threatening protesting farmers has gone viral?'

[Translation] Delhi Police use your batons we [pro-CAA Hindu mobs] are with you. Use heavy batons we are with you. If you require then call upon us we are with you. What happened? What happened? Whoever the traitor is cut them down. Cut them down. Is she a Bheemti? [referring to a person of the lower caste who supports Ambedkar]. Who are you? Enough of the attacks on Sanatan [Hinduism]. No longer shall we suffer attacks. Come out all Sanatanis [i.e. Hindus]. This is the fight for now or never. Kill or be Killed, whatever happens will see afterwards. Enough of this [tolerance]. Blood which doesn't boil is water.

In the video she openly advocates for violence and bloodshed, and goads the Delhi police to undertake violence. She also goads the mob on the basis of defence of Hindu religion. This is happening live and being broadcast on Facebook, and no action is taken by the administration to stop it or take into cognisance the effect this may have in further exacerbating the situation. All this is happening while she stands surrounded by paramilitary and reserve police personnel in full riot gear. It takes place on the very first day of violence on 23 February. Another video is captured by a journalist who records her in the act at one of the sites of violence in Delhi where she is seen repeating the same sentiments and hurling stones to stoke violence, which had apparently abated.⁷⁵

The DMC report has noted the complicity⁷⁶ and inaction of the Delhi police in the riots,⁷⁷ and in its recommendations asked the government to make the Delhi police accountable.⁷⁸ Given the mounting evidence and ample availability of these mobilisation videos covered in investigative reporting,⁷⁹ the undefined contours of hate speech, and the targeting of minorities in these speeches, the anti-Muslim bias of law enforcement in Delhi represents a singular challenge to the provisions dealing with hate speech in the Indian Constitution. However, the only ray of hope seems to be the report commissioned by the

75 The Wire, 'Delhi Riots Witness Who Filmed Ragini Tiwari's Violent Acts Asks Why Police Has Not Arrested Her', YouTube, 17 September 2020, <https://www.youtube.com/watch?v=NMkBY-Rh1C8>, accessed 27 January 2023.

76 Shamshad, 'Report of the Fact-Finding Committee on North-East Delhi Riots of February 2020', pp. 68–80.

77 *ibid.*, pp. 101–104.

78 *ibid.*, p. 108.

79 Sagar, 'Delhi Violence Unmasked: Part One'; Sagar, 'Delhi Violence Unmasked: Part Two'; Sagar, 'Delhi Violence Unmasked: Part Three'.

DMC as it is a statutory body of the Delhi government, and the report may be used by courts in judgement of the case.⁸⁰

6 Hate Speech and Violence during the COVID-19 Pandemic: The Tablighi Jamaat Case

In India the spread of COVID-19 was disproportionately and specifically associated with Muslims because a significant number of Tablighi Jamaat members were diagnosed with the disease. This association of COVID-19 with Muslims occurred in an already charged atmosphere of xenophobic hatred. The discourse on the coronavirus pandemic morphed and superimposed itself on local prejudices in India. This case study looks at the case of Tablighi Jamaat, the world's largest Muslim missionary organisation, and the hate mongering that caused the targeting of Muslims as primary carriers and spreaders of the coronavirus in India. The hate-filled coverage and comments targeting Tablighi Jamaat aimed at painting the whole Muslim community as the main carrier of the coronavirus and, further, Muslims were attributed as having done so intentionally as an act of 'Jihad' (holy war). The most perturbing thing about this event is that politicians across the entire political spectrum partook in criminalising the group and attributing malicious intentions to Tablighi Jamaat, and by extension giving ample space to the media and the central executive to target the community. This took place with the backdrop of a massive state failure to properly execute its lockdown plan because of which hundreds of thousands of labourers were stranded across interstate borders in India.

6.1 *The Event*

The Tablighi Jamaat is headquartered at Nizamuddin Markaz in New Delhi where, apart from it being a guest house, they annually conduct the consultation program over its activities with its international members. In 2020 the program was scheduled to take place between 14 and 16 March. No prior

80 On the status of various fact-finding reports and objections to them raised by the prosecution, see Sofi Ahsan, 'Can't Have Parallel Judicial System: Centre on Plea in Delhi HC against Fact-Finding Reports', *The Indian Express*, 24 February 2021, <https://indianexpress.com/article/cities/delhi/cant-have-parallel-judicial-system-centre-on-plea-in-delhi-hc-against-fact-finding-reports-7201799/>, accessed 27 January 2023.

screening was conducted at the airports before letting in the members who had arrived from across the world. On 13 March the Delhi government, invoking the colonial era Epidemic Diseases Act of 1897, banned gatherings of more than 2,000 people. However, it was only three days later that the ban was extended to religious gatherings, and by then Tablighi's consultation program was over and many of its members had begun dispersing across the country as a matter of practice while some had stayed back.⁸¹ By the time the Prime Minister had announced a civil curfew (Janata curfew) on 19 March, reports had begun trickling in about the members of Tablighi Jamaat who were diagnosed with the virus in different parts of the country.⁸²

Meanwhile, the relocation of members from the premises became a problem as the Jamaat representatives made appeals to the local administration who instructed them to stay in place and shut the gates of the Markaz.⁸³ On 30 March it was reported that the Chief Minister of Delhi had instructed the police to bring criminal charges against the group,⁸⁴ and the following day the Delhi police charged its head Maulana Saad and six other Jamaat officials for 'deliberately, wilfully, negligently and malignantly' disobeying its orders in holding a mass gathering without proper social-distancing norms and without recourse to necessary sanitary mechanisms.⁸⁵ On 2 April the federal government moved to blacklist as many as 960 foreign members of the group for infringement of visa norms and directed the heads of all state police forces, including the Delhi police, to take legal action on the basis of the Foreigners Act, 1946 and Disaster Management Act, 2005.⁸⁶ Subsequently, extending over a couple of weeks, the mainstream media joined the chorus with the Union government in claiming that Tablighi Jamaat and, by extension, the Muslim community had been instrumental in spreading the coronavirus in India.⁸⁷

81 Seema Chishti, 'The Nightmare: The Modi Government's Persecution of the Tablighi Jamaat', *The Caravan*, 30 January 2021, <https://caravanmagazine.in/politics/nightmare-persecution-tablighi-jamaat>, accessed 27 January 2023.

82 *ibid.*

83 *ibid.*

84 PTI, 'Nizamuddin Congregation: Arvind Kejriwal Orders FIR against Maulana', *India Today*, 30 March 2020, <https://www.indiatoday.in/india/story/nizamuddin-congregation-arvind-kejriwal-orders-fir-against-maulana-1661514-2020-03-30>, accessed 27 January 2023.

85 Chishti, 'The Nightmare'.

86 *ibid.*

87 *Ibid.*

6.2 *Media Narratives: 'Super Spreader' to 'Corona Jihad'*

Union minister of the BJP Mukhtar Abbas Naqvi called the Tablighi Jamaat activities a criminal act wherein by dispersing across the country the Tablighi Jamaat had acted as 'coronavirus carriers'.⁸⁸ However, it was the ruling Aam Aadmi Party (AAP; seen as a liberal opposition to the right-wing BJP) in Delhi that had sought to initiate and criminalise the Tablighi Jamaat's negligence.⁸⁹ Providing an opening to the Union government of the BJP and its media cohorts, the mainstream media flooded the television screens and social media platforms of Twitter and Facebook with inflammatory hashtags aimed at demonising the Muslim community.⁹⁰ Some analysts began linking the so-called 'Corona Jihad' to the broader 'designs' of Muslims on India historically.⁹¹ Inflammatory headlines to equally bigoted TV segments pushed the narrative that Tablighi Jamaat had used religion to endanger the nation, brought the pandemic to devastating proportions, and increased the risk and speed of spread of the virus in the entire country. The 'investigative' coverage of the Tablighi Jamaat from Zee News's title reads 'Crona Jihad का "Maulana" कब होगा गरिफ्तार? | Escaped | Maulana Saad | Coronavirus | Most Wanted' (Corona Jihad's Maulana, when will he be arrested?).⁹²

The YouTube description of the video reads: 'Maulana Saad is hiding after spreading the Coronavirus to thousands of people. It has been over 142 hours since Maulana escaped and the police are still looking for him. When the "maulana" of "Corona Jihad" will be arrested?' Aside from the bombastic graphs and amateur movie effects, the discourse that the channel pushes

88 India Today Web Desk, 'Coronavirus in India: Tablighi Jamaat's Criminal Act Cannot be Forgiven, Says Mukhtar Abbas Naqvi at e-Agenda', *India Today*, 30 May 2020, <https://www.indiatoday.in/india/story/coronavirus-in-india-tablighi-jamaat-s-criminal-act-cannot-be-forgiven-says-mukhtar-abbas-naqvi-at-e-agenda-1683674-2020-05-30>, accessed 23 January 2023.

89 Sweta Goswami, 'Kerjwal Warns of Rise in Cases after Tablighi Jamaat Episode', *Hindustan Times*, 1 April 2020, <https://www.hindustantimes.com/delhi-news/kejriwal-warns-of-rise-in-cases-after-tablighi-jamaat-episode/story-WBnIqyYQgzfGoX3jrxiADN.html>, accessed 27 January 2023.

90 Ritika Jain, 'Covid-19: How Fake News and Modi Government Messaging Fuelled India's Latest Spiral of Islamophobia', *Scroll.in*, 21 April 2020, <https://scroll.in/article/959806/covid-19-how-fake-news-and-modi-government-messaging-fuelled-indias-latest-spiral-of-islamophobia>, accessed 27 January 2023.

91 New Delhi Times, 'India faces Coronavirus Jihad', YouTube, 11 April 2020, <https://www.youtube.com/watch?v=qCEi-WFyyfo>, accessed 27 January 2023.

92 Zee News, 'Crona Jihad का "Maulana" कब होगा गरिफ्तार? | Escaped | Maulana Saad | Coronavirus | Most Wanted', YouTube, 6 April 2020, <https://www.youtube.com/watch?v=PRsx843BDzk>, accessed 27 January 2023.

falsely portrayed an event of negligence into a highly orchestrated criminal conspiracy on the part of the group's head, Maulana Saad, and tried to link this to the conception of holy war in Islam by using terms like 'Corona Jihad'.⁹³ TV anchors gave polarising coverage to focus on this instance, which resulted in a charged atmosphere. Following is an excerpt from the opening segment of one of the most popular Hindi news channels in India (Zee News), widely available on YouTube:

Dunya ka koi bi Dharm ho wo Qanoon tod ne ki baat nahi karta. Koi bi Dharm Desh ko dhokha dene ke liye nahi kehta. Aur koi bi Dharm jhoot Bol ne ke liye nahi kehta. Lekin bahrat ko coronavirus ke naye khatre ki taraf dakel ne wale Tablighi Jamaat ne Dharm ke naam par ye hi sab kuch kia hai. Pure desh ke saath dhokha dia hai. Desh ko jhoot bola hai. (0:09-0:32s)⁹⁴

[Translation] No religion of the world talks about breaking laws. No religion teaches to betray the nation. No religion teaches to speak lies. But in pushing India towards the new danger of coronavirus, Tablighi Jamaat in the name of religion has done exactly all this. [They have] betrayed the entire nation. [They have] lied to the nation.

Another English news channel debate propagated falsified information, attributing violence and misdemeanour to the Tablighi Jamaat people against the medical staff, quarantine personnel, and police.⁹⁵ At one point even the official police handles on social media had to step in and flag biased and fake news reporting by news channels.⁹⁶ Various other vernacular news channels ran similar polarising coverage to that in Karnataka, generating the image of

93 *ibid.*

94 Zee News, 'DNA: तबलीगी जमात का देश से 'वशियत'?' | Sudhir Chaudhary | Analysis | Tablighi Jamaat Coronavirus', YouTube, 1 April 2020, <https://www.youtube.com/watch?v=VYmqyKQyKfG>, accessed 27 January 2023.

95 Republic World, 'Arnab Goswami Debates: Tablighi COVID-19 Scare Continues', YouTube, 7 April 2020, <https://www.youtube.com/watch?v=PQCzkkOBv7Y>, accessed 27 January 2023.

96 NL Team, 'Firozabad Police Refute Zee News Claim That Medical Staff Escorting Tablighi Jamaat Men Was Pelted with Stones', NewsLaundry, 6 April 2020, <https://www.newslaundry.com/2020/04/06/firozabad-police-refute-zee-news-claim-that-medical-staff-escorting-tablighi-jamaat-men-was-pelted-with-stones>, accessed 27 January 2023; Wire Staff, 'Police Say Zee News Reports on Medical Workers, Tablighi Jamaat Members Being Attacked Is False', *The Wire*, 7 April 2020, <https://thewire.in/media/firozabad-police-zee-news-tablighi-jamaat>, accessed 27 January 2023.

Muslims as 'others' who were carrying the virus.⁹⁷ Old videos shared over social media without context and edited subheadings also became a cause of rising xenophobia wherein viral clips showcasing Muslims as breaking social-distancing norms and protocols were shared countless times over platforms such as Tik Tok and WhatsApp.⁹⁸

6.3 *Aftermath*

Many unfortunate acts of violence took place against Muslims as a consequence of the narratives being generated over the media.⁹⁹ As for the foreign citizens the cases were ultimately quashed by the courts after prolonged hearings, in many cases noting the frivolous and malicious nature of the charges brought by the police and the government against the accused.¹⁰⁰ It is important to note the role of various embassies in pressuring the Indian government for the release of their citizens¹⁰¹ as well as pressure from the Organisation of Islamic Cooperation noting the incessant Islamophobia in India.¹⁰² Mike Ryan, the Emergency Program Director of the World Health Organization, also intervened to highlight the disapproval of the handling of the coronavirus

97 Prajwal Bhat, "‘Tablighi Virus’, ‘Pakistan Devils’: Hate Speech in Kannada Media Coverage Documented", *The News Minute*, 21 September 2020, <https://www.thenewsminute.com/article/tablighi-virus-pakistan-devils-hate-speech-kannada-media-coverage-documented-133574>, accessed 27 January 2023; Vikhar Ahmed Sayeed, 'Lapdog Narratives of the Kannada Media', *Frontline*, 9 October 2020, <https://frontline.thehindu.com/the-nation/lapdog-narrative/article32633273.ece>, accessed 27 January 2023.

98 The Quint, 'Old Video Shared as Muslims Licking Plates to Spread Coronavirus', YouTube, 3 April 2020, <https://www.youtube.com/watch?v=UNBN97p6jW8>, accessed 27 January 2023; Ritika, 'Covid-19'; Siddhartha Roy, 'Hate Goes Viral in India', *The Diplomat*, 4 May 2020, <https://thediplomat.com/2020/05/hate-goes-viral-in-india/>, accessed 27 January 2023.

99 Al Jazeera English, 'India Muslims Targeted in Attacks Over Coronavirus', YouTube, 3 May 2020, <https://www.youtube.com/watch?v=EC2zNBDmLas>, accessed 27 January 2023; DW News, 'Muslims in India Accused of "Corona Jihad" | Interview with Arundhati Roy', YouTube, 17 April 2020, https://www.youtube.com/watch?v=x8Psit-wr_U, accessed 27 January 2023; Times Now, 'Muslim Woman Activist Attacked While Distributing Food, Accused of "Spreading Coronavirus"', YouTube, 7 April 2020, https://www.youtube.com/watch?v=4D64h_YqMDk, accessed 15 October 2021.

100 Chishti, 'The Nightmare'.

101 *ibid.*

102 OIC-IPHRC (@OIC-IPHRC), '1/2 #OIC-IPHRC condemns the unrelenting vicious #Islamophobic campaign in #India maligning Muslims for spread of #COVID-19', Twitter, 19 April 2020, 8:53 p.m., https://twitter.com/OIC_IPHRC/status/1251826155939926017?s=20, accessed 27 January 2023.

in India: 'Having Covid-19 is not anybody's fault. Every case is a victim. It is important that we do not profile the cases on the basis of racial, religious and ethnic lines'.¹⁰³ None of the other religious gatherings on at that time received the attention Tablighi Jamaat did in the media despite developing a broader scope of infection.¹⁰⁴ No retraction or apology was rendered for the trauma inflicted upon the members of Tablighi Jamaat or any responsibility allocated to the mainstream media's misreporting of the event. This, even after multiple fact-checking sources debunked most of the malicious vitriol spread by the news channels and social media platforms.¹⁰⁵

To conclude, the majoritarian context in India and a sensationalist media form a bulwark against a genuine reporting of events, simply by way of the volume and repetition of news and the lack of accountability placed on the executive. This case demonstrates that the tacit nexus between the media and the central executive is a serious challenge to the maintenance of ethical norms of media reporting. Further, judicial enforcement remains circumscribed on account of executive inaction and non-compliance.

The Tablighi Jamaat case also shows that while outsiders who share the same faith as Muslims become subject to local prejudices, embassy support and international pressure is remedial for these cases, whereas the local Muslim residents are exposed to prolonged stigmatisation. In sum, the absence of external pressure and demands for accountability from outside India leave a protection gap for minorities within the state, a lacuna that is consistent also in the cases of the Christian and North Eastern ethnic minorities discussed below.

103 Rasia Hashmi, 'No One's Fault, Don't Profile COVID-19 along Religious Lines: WHO', *The Siasat Daily*, 8 April 2020, <https://www.siasat.com/no-ones-fault-dont-profile-covid-19-along-religious-lineswho-1871048/>, accessed 27 January 2023.

104 Roy, 'Hate Goes Viral in India'.

105 News Laundry, 'Corona & Sudhir Chaudhary's Jihad: TV Newsance Episode 81', YouTube, 15 March 2020, <https://www.youtube.com/watch?v=OVaH0tAHHqY>, accessed 27 January 2023; News Laundry, 'Tablighi Jamaat versus Arnab Goswami: TV Newsance Episode 84', YouTube, 4 April 2020, <https://www.youtube.com/watch?v=JXU8PuTGkUk>, accessed 27 January 2023; Media Scanner, 'Fake Alert: Long List of Islamophobic Fake News which Is Going Viral During Coronavirus Pandemic', *Media Scanner*, 9 May 2020, <https://mediascanner.in/fake-alert-long-list-of-islamophobic-fake-news-which-is-going-viral-during-coronavirus-pandemic/>, accessed 27 January 2023; Syeda Zainab Akbar, Divyanshu Kukreti, Somya Sagarika, and Joyojeet Pal, 'Temporal Patterns in COVID-19 Misinformation in India', University of Michigan, 2020, <http://joyojeet.people.si.umich.edu/temporal-patterns-in-covid-19-misinformation-in-india/>, accessed 27 January 2023.

7 Hate Speech Targeting Christian Minorities

The two case studies presented above document the relationship between hate speech, incitement, and the surge of violence in the case of Muslim minorities, the most significant minority group targeted by Hindu nationalists. However, other religious minorities in India, including Christians, Sikhs, and Jain, and ethnic minorities such as those in the North-Eastern states are routinely subjected to hate speech and violence. These next two sections briefly describe the situation of Christians and ethnic minorities to demonstrate the breadth and consistency of the patterns of hate speech and targeted violence in India that capitalise on the Hindu nationalist ideology.

Christianity has been practised in India since the 1st century AD, and there are some 24 million Christians in the country according to 2011 census data. Christians have faced persecution in India for many years. However, the international profile of Christian persecution in India rose significantly in the late 1990s, concurrent with the rise of the BJP in mainstream politics, when a string of attacks on Christian churches was publicised in the international media.¹⁰⁶ As with the Muslims, Christians are targets of the Hindu nationalist ideology.

In 1999, Hindu nationalists from the Bajrang Dal youth organisation killed Australian missionary Graham Staines and his two young sons by burning them to death in their car in Orissa (Odisha) state, drawing high profile international media attention. In 2021, the charity Open Doors ranked India tenth in the world for the persecution of Christians,¹⁰⁷ in this case on the basis of religious nationalism. The most recent example of Christian persecution escalating into widespread, targeted violence was the 2008 Orissa violence. Hindu nationalist groups targeted Christian communities in the Kandhamal district through a planned and tightly orchestrated campaign of systematic violence, for which RSS and Bajrang Dal members had prepared for several years in advance.¹⁰⁸ A people's tribunal found that at least 39 Christians were killed, 232 churches destroyed, 600 villages ransacked, 5,600 houses looted and burned, and 54,000 people forcibly displaced – human rights organisations claim that the actual

106 Dugger, Celia W. 'Attacks on Christians Are Increasing in India', *The New York Times*, 23 January 1999, <https://archive.nytimes.com/www.nytimes.com/library/world/asia/012399india-christians.html>, accessed 27 January 2023.

107 Open Doors, 'World Watch Map: The 50 Most Dangerous Countries to Follow Jesus', 2021, <https://www.opendoors.org.au/persecuted-christians/world-watch-list/>, accessed 27 January 2023.

108 Cecilia Jacob, personal interview with former RSS preacher/promoter) from Kandhamal district, India, January 2012.

figures are much higher.¹⁰⁹ The nature of the violence was very cruel, involving rape, torture and mutilation, alongside efforts at forced mass conversion to Hinduism.¹¹⁰

Christian persecution, including inflammatory hate speech and intimidation leading to direct acts of violence, has increased since the BJP came to power in 2014. RSS-led accusations of forced Hindu to Christian conversions misuse the anti-conversion laws to intimidate Christian communities and spread misconceptions among Hindu populations that Christians are a threat to their religion.¹¹¹ The Evangelical Fellowship of India's Religious Liberty Commission (EFIRLC) recorded a 57 per cent increase in hate speech and violence against Christian minorities in 2018 as evidence of a steep rise in targeted religious violence across the country.¹¹²

Harassment, intimidation, and lynching of Christians are also reported to have increased significantly during the pandemic lockdown. The organisation Persecution Relief recorded a 41 per cent rise in hate crimes against Christians during the first half of 2020 compared to the same period in 2019, with 293 cases recorded. Noting that most hate crimes go unreported for fear of retribution, these figures included six killings, five rapes, and 51 crimes of a 'heinous nature' against women and children.¹¹³ Despite these trends, there has been little response from police to accept reports, and there is documented evidence that police have directly participated in using violence to harass and

109 Priya Ramani, "'They Don't Feel Sorry': Revisiting Kandhamal 10 Years after the Violence against Christians', Scroll.in, 26 August 2018, <https://scroll.in/article/891587/they-dont-feel-sorry-revisiting-kandhamal-10-years-after-the-violence-against-christians>, accessed 27 January 2023.

110 *Ibid.*; Gethin Chamberlain, 'Convert or We Will Kill You, Hindu Lynch Mobs Tell Fleeing Christians', *The Guardian*, 19 October 2008, <https://www.theguardian.com/world/2008/oct/19/orissa-violence-india-christianity-hinduism>, accessed 27 January 2023; International Christian Concern, 'Martyrs of the 2008 Orissa Riots Continue to Inspire the Church of India', Persecution, 3 April 2019, <https://www.persecution.org/2019/03/04/martyrs-2008-orissa-riots-continue-inspire-church-india/>, accessed 27 January 2023; PTI, '2008 Kandhamal Nun Gang-rape Case: 3 People Convicted, 6 Acquitted', *Times of India*, 14 March 2014, <https://timesofindia.indiatimes.com/india/2008-kandhamal-nun-gang-rape-case-3-people-convicted-6-acquitted/articleshow/31998696.cms>, accessed 27 January 2023.

111 France24 English, 'Sharp Rise in Attacks on India's Christian Minority', YouTube, 3 April 2018, <https://www.youtube.com/watch?v=KYM7LSrYDHk>, accessed 27 January 2023.

112 *ibid.*

113 Ziya Us Salam, 'Christians as Targets During the Lockdown', *Frontline*, 28 August 2020, <https://frontline.thehindu.com/the-nation/christians-as-target/article32284946.ece>, accessed 27 January 2023.

arrest Christians.¹¹⁴ In sum, the contours of hate speech and targeted violence that support a majority Hindu nationalist ideology are familiar and consistent across Muslim and Christian communities. The emphasis on forced conversion has prompted the spread of misinformation and rumour that have tainted Hindu perceptions of Christians and cultivated sympathy for RSS-led harassment and intimidation of this population. These trends intensified during the pandemic lockdown.

8 Hate Speech Targeting Ethnic Minorities in the North East

8.1 *Racism against North Eastern Peoples*

The peoples from the North Eastern Region have long been targets of racial stereotyping and profiling in many parts of India. In general they have been subjected to abuse and racial slurs such as ‘chinky’, ‘Chinese’, ‘momo’, and ‘chowmein’ and treated as outsiders.¹¹⁵ Many young people from the eight states that make up India’s North East travel in search of employment and higher education to metropolitan centres like Delhi and Bengaluru.¹¹⁶ As such they are subject to harassment from landlords and employers.¹¹⁷ Women from this region are subject to unwarranted attention and sexual harassment, in many cases stereotyped as sex workers.¹¹⁸ Under Indian law the punishment for racial abuse is imprisonment for up to five years or a fine, or both. However, because of an absence of laws specifically targeting racial discrimination against these ethnic minorities, the people from these regions prepare themselves to face discrimination in the Hindi heartland of the country.¹¹⁹

114 CBN News, ‘Pastor Murdered, Church Burned, Anti-Christian Violence on Upswing in India’, YouTube, 24 January 2018, <https://www.youtube.com/watch?v=tCskTtTyMI>, accessed 27 January 2023; see also Al Jazeera English, ‘Indian Christians accuse police of “taking sides”’, YouTube, 5 October 2008, <https://www.youtube.com/watch?v=OCHPmzkokEQ>, accessed 27 January 2023.

115 Annie Banerji, ‘Spat On and Abused: Coronavirus Fuels Racism against India’s Northeasterners’, Reuters, 20 June 2020, <https://www.reuters.com/article/us-health-coronavirus-india-discriminati-idUSKBN23Q2JS>, accessed 27 January 2023.

116 See Alana Golmei, ‘Let’s Talk About Racism: Don’t Call Us ‘Chinky, Momo, Chowmein’ Says a Northeastern Woman’, *Hindustan Times*, 23 May 2017, <https://www.hindustantimes.com/india-news/let-s-talk-about-racism-don-t-call-us-chinki-momo-chowmien-asks-a-northeastern-woman/story-SJckp4InptNV6Te29dlltj.html>, accessed 27 January 2023.

117 *ibid.*

118 *ibid.*; Banerji, ‘Spat On and Abused’.

119 Golmei, ‘Let’s Talk About Racism’.

8.2 *Racial Discrimination and the Pandemic*

In the early phases of the COVID-19 crisis, Chinese and East Asian peoples became the centre of attention in a global threat discourse due to the origin of the virus in Wuhan district. However, the implications went far beyond the Chinese nation-state and extended to average Chinese citizens and anyone who shared the facial features of far-eastern peoples. These people became subject to racist attacks that jeopardised their person irrespective of whether they were Chinese or had any part in the spread of the virus. The pandemic brought out multiple cases of profiling and bigotry aimed at racial minorities in India. The people from the North East who share similar facial features with East Asian peoples became victims of pre-existing biased attitudes towards them and were treated as unhygienic carriers of the coronavirus.¹²⁰ During the pandemic many persons from these ethnic minorities came under attack and were literally called 'coronavirus', spat on and in many cases told to leave their accommodation without notice.¹²¹ In places they were barred from entering supermarkets because of racial profiling.¹²² Many faced harassment and undue screening for coronavirus when they had no symptoms and were seeking treatment for other ailments.¹²³

8.3 *Legal Frameworks*

Although India has signed the International Convention on the Elimination of All Forms of Racial Discrimination, it lacks legislation specifically aimed at racism.¹²⁴ In the aftermath of the brutal murder of Nido Tania (from Arunachal Pradesh in India's North East) in 2014, the home ministry and the North Eastern Council set up a committee to advise on the legal mechanisms to combat racism.¹²⁵ The M.P. Bezbaruah Committee gave recommendations on how to combat racism; however, these recommendations are yet to be comprehensively

120 *ibid.*; Linda Chhakchhauk, 'Another pandemic: Northeasterners in India Face Racist Harassment, Assault', *The Citizen*, 27 March 2020, <https://www.thecitizen.in/index.php/en/NewsDetail/index/9/18503/Another-Pandemic-Northeasterners-in-India-Face-Racist-Harassment-Assault>, accessed 27 January 2023.

121 *ibid.*

122 Sharan Poovanna, 'Covid-19: People from Northeast Face Discrimination in Karnataka', *Mint*, 29 March 2020, <https://www.livemint.com/news/india/covid-19-people-from-northeast-face-discrimination-in-karnataka-11585479540806.html>, accessed 27 January 2023.

123 Kimi Colney, 'Indians from the Northeast Face Intensified Racism as Coronavirus Fears Grow', *The Caravan*, 4 April 2020, <https://caravanmagazine.in/communities/coronavirus-increases-racism-against-indians-from-northeast>, accessed 27 January 2023.

124 *ibid.*

125 *ibid.*

implemented via legislation.¹²⁶ The Bezbaruah Committee recommended introduction of specifically anti-racial legislation which would be ‘gender-neutral’ and would recognise these instances as non-bailable offences.¹²⁷ Among other institutional measures, it pointed out the need to sensitise law enforcement personnel to the nature of these crimes.¹²⁸

To conclude, the hate speech/slurs aimed at these ethnic minorities have a predominantly racial bias. The racial bias is further aligned to a discrimination based on linguistic difference at local levels. The pandemic has exacerbated the already prevalent biased attitudes towards these minorities, especially in the Hindi heartland. The anti-discrimination laws that exist do not seem to be alleviating the discrimination against ethnic minorities because they are rarely implemented. A comprehensive policy is needed in order to rectify these legal shortcomings, taking into account the recommendations of the Bezbaruah Committee at both central and state government levels.

9 Conclusions

... it was also clear enough to me that what have been called Hindu–Muslim riots in India are misnamed, that they could not have been carried out with such force in so many places, in many cases for extended periods of time, and repeatedly, with the complicity of the police and the failure of political parties in control of government and the administrative and police officers in the district to prevent or at least to contain them once they have begun. In short, what are called Hindu–Muslim riots in India are, in fact, more like pogroms, and have recently, in Gujarat and elsewhere taken the form of genocidal massacres and local ethnic cleansing as well.¹²⁹

The article shows that hate speech in India follows the contours of a historical narrative of communal identity and a violent Hindu nationalist ideology expressed routinely through mainstream politics that associates Indian nationhood with Hinduism. There remain high levels of impunity for past episodes of

126 Sukanya Singha, ‘Governments Have Failed to Address Racial Abuse of People from the Northeast’, *The Wire*, 14 May 2020, <https://thewire.in/rights/governments-have-failed-to-address-racial-abuse-of-people-from-the-northeast>, accessed 27 January 2023.

127 *ibid.*

128 *ibid.*

129 Paul Brass, *Forms of Collective Violence: Riots, Pogroms, and Genocide in Modern India* (New Delhi: Three Essays Collective, 2006), pp. xv–xvi.

major communal violence and pogroms throughout the political establishment along all sides of politics, and impunity is deeply institutionalised in national and state-level policing. Hate speech and violence along religious and ethnic lines has increased sharply since the election of Prime Minister Narendra Modi and his Hindu nationalist party BJP in 2014 and again in 2019. Hate speech expressed at the highest levels of political authority remains unchecked, and new policies have exacerbated a climate of intercommunal tension and impunity for offenders. There is a dearth of accountability mechanisms both nationally and at the regional or international level, nor meaningful national reconciliation strategies to address historical impunity and intergroup grievances.

This research shows that the character and dynamics of hate speech is historically and politically situated context of far-right nationalist narratives that transcend democratic and constitutional protections for minorities. Mitigating hate speech and preventing atrocities requires a holistic approach across sectors of governance and civil society. First, impunity within the highest echelons of political authority in India, alongside explicit inflammatory speeches, creates a permissive environment for unchecked and routine atrocities to continue to be committed in India. The need for accountability of India's political leaders must be the highest priority for reigning in hate speech in the country and curtailing communal violence.

Second, sweeping reforms in the law and practices within the legal system are needed to address the problem of impunity and partiality in its rulings, from state to federal level.¹³⁰ A growing partiality has become apparent within the Supreme Court of India since 2014.¹³¹ To this end, constitutional reforms to disincentivise political influence over the judiciary, such as a prohibition on joining political parties or holding additional ad hoc government appointments, are needed. Third, deep reform of the security sector in India to address bias and impunity and to improve the professional capacity of the police force at both state and federal level to investigate, monitor and de-escalate intergroup tensions.

¹³⁰ Valay Singh, 'After Ayodhya, another Mosque-Temple Dispute Brews in India's UP', Al Jazeera English, 9 April 2021, <https://www.aljazeera.com/news/2021/4/9/after-ayodhya-another-mosque-temple-dispute-brews-in-indias-up>, accessed 27 January 2023; Akash Bisht, 'Babri Mosque Demolition Case: India's BJP Leaders Acquitted', Al Jazeera English, 30 September 2020, <https://www.aljazeera.com/news/2020/9/30/indian-court-acquits-all-accused-in-babri-mosque-demolition-case>, accessed 27 January 2023.

¹³¹ Shubhankar Dam, 'Second Innings: How Post-Retirement Ambitions Imperil Judges' Integrity', *The Caravan*, 1 February 2020, <https://caravanmagazine.in/reportage/retired-judges-gogoi-integrity-corruption-supreme-court>, accessed 27 January 2023; Atul Dev and Nikita Saxena, 'Supreme Charge', *The Caravan*, 20 April 2019, <https://caravanmagazine.in/law/former-supreme-court-employee-accuses-cji-ranjan-gogoi-sexual-harassment>, accessed 27 January 2023.

Beyond formal reforms at the state level, grassroots transitional justice and reconciliation are needed to extend justice for past and recent grievances, and to transform the hostile narratives between religious and ethnic groups. Since the 1980s, civil society, faith-based organisations, and the media have been integral to strengthening democracy in India and holding political actors to account. One of the most concerning trends in recent years has been the imposition of increasingly harsh restrictions on the civil liberties of these groups.¹³² The failure of the government to condemn these restrictions, such as the suspension of social media accounts, personal threats and physical attacks, has curtailed the ability of civil society to hold the government to account and advocate for human rights and peacebuilding across ethnic, religious, and other social divisions.¹³³

Hate speech in the age of digital media and instant accessibility has proved particularly debilitating in prevention of hate crimes, rather it has proved to be exceptionally influential in the mobilisation and incitement to violence. Many cases, including those of Kapil Sharma and Ragini Tiwari, highlight the potency of social media platforms particularly live video broadcast on individual smartphones in communication, receiving mobilisation, and command on ground. Greater regulation is needed both within India and by social media giants such as Facebook and Twitter¹³⁴ to curtail hate speech¹³⁵ and direct incitement and mobilisation of violence.¹³⁶

132 Amrita Basu, 'Whither Democracy, Secularism, and Minority Rights in India?' *The Review of Faith & International Affairs*, 16(4) 34–46 (2018).

133 Paul Cheyney, 'India at the Crossroads? Civil Society, Human Rights and Religious Freedom: Critical Analysis of CSOs' Third Cycle Universal Periodic Review Discourse 2012–2017', *The International Journal of Human Rights*, 24(5) 531–562 (2020).

134 Yuthika Bhargava, 'Indian Laws Must be Followed: Government to Twitter', *The Hindu*, 11 February 2021, <https://www.thehindu.com/news/national/indian-laws-must-be-followed-government-to-twitter/article33798461.ece>, accessed 27 January 2023; K. Venkataramanan, 'Explained: Why Has the Centre Issued a Notice to Twitter, and What Are the Laws Governing the Cyber World?' *The Hindu*, 7 February 2021, <https://www.thehindu.com/sci-tech/technology/the-hindu-explains-why-has-the-centre-issued-a-notice-to-twitter-and-what-are-the-laws-governing-the-cyber-world/article33770912.ece>, accessed 27 January 2023.

135 Newley Purnell and Jeff Horowitz, 'Facebook's Hate-Speech Rules Collide with Indian Politics', *The Wall Street Journal*, 14 August 2020, <https://www.wsj.com/articles/facebook-hate-speech-india-politics-muslim-hindu-modi-zuckerberg-11597423346>, accessed 27 January 2023; Niharika Sharma, 'Allegations of Favouritism in India Couldn't Have Come at a Worse Time for Facebook', *Quartz India*, 18 August 2020, <https://qz.com/india/1893001/zuckerbergs-facebook-under-fire-over-hate-speech-modis-bjp/>, accessed 27 January 2023.

136 Anam Ajmal, 'Kapil Mishra's Speech on CAA Example of Inciting Violence: Zuckerberg', *The Times of India*, 7 June 2020, <https://timesofindia.indiatimes.com/india/kapil-mishras-speech-on-caa-example-of-inciting-violence-zuckerberg/articleshow/76240114.cms>, accessed 27 January 2023.

Finally, international engagement with the issue of religious and minority persecution in India is limited. The United States Commission on International Religious Freedom releases an annual report in which it monitors religious freedom in India and makes recommendations. The issue of hate speech and the targeting of religious and minority groups has also been raised regularly at the UN Human Rights Council through the Universal Periodic Review. International human rights groups, such as Human Rights Watch and Amnesty International, have also documented persecution of religious and ethnic minorities in India and called on the government to take action. However, India has no formal obligations and is not subject to sanctions for not adhering to these recommendations. Largely, it has been able to circumvent international attention and pressure, particularly as India's rapid economic growth and political significance has meant that governments around the world have prioritised political relations and trade with India over its human rights record.

Members of the international community, including international organisations and governments, should pay greater attention to the recent spike in instances of hate speech, communal violence, and the passing of numerous discriminatory laws. Coinciding with the leadership of a far-right government, these legal provisions have engendered an atmosphere of fear and mistrust between communities, and fuelled the targeting of minority groups, on several occasions escalating into major episodes of targeted violence and displacement. Accordingly, greater international pressure for accountability, and for the government of India to make relevant reforms in political rhetoric, law, security, and regulation of the media, including social media, to prevent the continued proliferation of hate speech, incitement, and violence targeting minorities is needed.

Returning to the purpose and themes of this special issue, the experiences of hate speech and incitement to violence in India confirm that their relationship to atrocity prevention is not linear, and requires a holistic understanding to identify potential pathways of violence. Hate speech is deeply implicated in the dynamics of atrocity violence in India, and systematic patterns of behaviour are identifiable. Still, these need to be conceptualised as part of a complex array of historically situated and politically contingent factors, and the role of new social media, including social media influencers, in accelerating the spread of hate speech and incitement accounted for.