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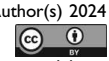
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The Rule of Law in an Ethnocracy: India's Citizenship Amendment Act and the Will of the Hindu Ethnos

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Abstract

What is the fate of the rule of law in India that is transitioning to an ethnocracy? Drawing on a 'thin' conception of the rule of law, this article argues that the controversial Citizenship Amendment Act responds to the emergence of a political ideal that constructs the Hindu ethnos as central to the Indian nation. Drawing on a variety of sources that include pronouncements by leaders of the RSS, the ideological fount of India's ruling BJP, analysis of right-wing periodicals that function as a conveyor belt of social ideas, and the provisions of the Citizenship Amendment Act (CAA), this article highlights the core themes that motivate the will of the Hindu ethnos in respect of the contentious legislation: (i) the persecution of the Hindu minorities in India's Muslim-majority neighbours; (ii) the discrimination faced by Dalits in particular and (iii) the establishment of India as a Hindu Zion. In the first section, I elaborate the concept of 'ethnocracy'. The second section reflects on the fate of the rule of law in an ethnocratic India by analysing the social justifications for the introduction of the contentious CAA. In the third section, I situate these dynamics within India's broader transition to an ethnocracy, the political ideals that shape this transition, and the shared social norms that emerge from this transition, which feeds back to the rule of law in an ethnocracy.

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Citizenship Amendment Act, democracy, ethnocracy, Hindutva, India, Narendra Modi, Rashtriya Swayamsevak Sangh, rule of law

India's credentials as a liberal democracy have been seriously questioned in recent years. In March 2021, Freedom House downgraded its status from 'free' to 'partly free'. This decline was attributed to 'a multiyear pattern in which the Hindu nationalist government and its allies have presided over rising violence and discriminatory policies affecting the Muslim population and pursued a crackdown on expressions of dissent by the media, academics, civil society groups, and protesters' (Freedom House, 2021). Within a few weeks the *Varieties of Democracy Report* noted India's slide from being the world's largest democracy to an electoral autocracy (Biswas, 2021). Prescient observers of Indian politics had long seen this decline coming especially after the election of the Hindu nationalist Bharatiya Janata Party (BJP) to power in 2014.

Accounts of India faltering in its commitment to a liberal, pluralistic, democratic order are gaining prominence (Adeney, 2020; Ganguly, 2019; Manor, 2021; Sinha, 2021). In particular, India's lurch towards a Hindu state has been noted (Jaffrelot, 2017) as the country took on the characteristics of an 'ethnic democracy' (Jaffrelot, 2019). A 2019 amendment to India's citizenship laws, which explicitly links membership of the political community to religious identity, departs from the 1950 Constitution's affirmation of secularism and equal rights for all and further the rise of an 'ethnic state' (Khosla and Vaishnav, 2021). Such moves, as I have argued elsewhere (Roy, 2021), signal India's transition to an ethnocracy in which 'a dominant ethnos gains political control and uses the state apparatus to ethnicise the territory and society in question' (Yiftachel, 2000: 730).

Scope and Methods

In the first section of this article, I elaborate the concept of 'ethnocracy'. The second section reflects on the fate of the rule of law in an ethnocratic India. In the article, following Brian Tamanaha (2007), I understand the rule of law – following a 'thin' rather than 'thick' conception – to be, 'about government officials and citizens acting in accordance with legal rules' (p. 17). Indeed, as Joseph Raz (1979) warns us, the rule of law is not to be confused with a complete social philosophy but merely elucidates a set of legal regulations. Such rules and regulations need not be substantively democratic and may well undermine human rights. They may well constrain state power to respect well-established and publicly accepted norms (rather than being exercised in arbitrary, ad hoc and discretionary ways), as Francis Fukuyama (2010) would have it. For this reason, it is essential for analysts to recognise the changing norms and the new constraints that frame the functioning of India's ethnocratic state. After all, an ethnocracy is not a totalitarian dictatorship where sovereigns rule by decree through arbitrary laws and executive fiat. Far from it, an ethnocratic state entails rule by the dominant ethnos, for the dominant ethnos and of the dominant ethnos (see also MB 'The irregular and the unmaking of minority citizenship' in this special issue). Just as a democratic state is theoretically subject to the will and constraints posed by the demos, an ethnocratic state is theoretically subject to the will and constraints posed by the (dominant) ethnos.

In the third section, I illustrate India's transition to an ethnocracy by documenting key political and policy practices of Narendra Modi's rule.

The article draws on diverse sources to support its argument. These include a thematic account of the political changes in India since 2014, a textual analysis of key pronouncements by Mohan Bhagwat, the supremo of the Rashtriya Swayamsevak Sangh (RSS) which is recognised as the ideological fount of the BJP, and an investigation into articles written on the contentious Citizenship Amendment Act (CAA) in two leading right-wing periodicals, *Organiser* and *OpIndia*, both of which unflinchingly support Hindutva, the ideology that India belongs to its majority Hindu community and others are welcome to live there on the sufferance of the majority community. The initial plan was to source the data from four publications – *Organizer*, *OpIndia*, *Swarajya* and *Panchjanya*. The rationale for selecting these four journals out of hundreds of journals and magazines published in India, is justified by the fact that these four publications espouse right-wing ideas and/or publish articles with a predilection towards right-wing thought. Out of these four publications, *Organizer* and *Panchjanya* stand out as official publications of the RSS, the mainstay of right-wing politics of India and the backbone of the Hindutva movement and have been in circulation for more than 50 years. The other two publications are not affiliated with the RSS at all. *Swarajya* identifies itself as center-right on the ideological spectrum. *OpIndia* is self-consciously further to the right and was created explicitly with the intention to denounce so-called liberal media and has an ideological slant towards the BJP. However, our plan was scuttled due to the unavailability of digital archives of *Panchjanya* and *Swarajya* and hence, we relied on the other two publications, *Organizer* and *OpIndia* for collating our data. Reflecting on the justifications offered by columns in these periodicals and on the pronouncements of RSS supremo Mohan Bhagwat offers insights into the emerging public norms that frame and constrain the state in India's emerging ethnocracy.

The contentions over the CAA provide a sad opportunity to examine the rule of law in ethnocratic India. Delivering on its 2019 election promise to amend citizenship laws that would make it more difficult for Muslims to obtain citizenship, the BJP-led government tabled the CAA in December 2020. Under the provisions of the Act, Hindus, Buddhists, Jains, Christians, Sikhs and Zoroastrians from its Muslim-majority neighbours Afghanistan, Pakistan and Bangladesh would now find their applications for citizenship fast-tracked. By explicitly omitting Muslims from its purview, the CAA introduced a religious filter that struck at the heart of the secular principles enshrined in the Constitution. While several provincial governments protested the imposition of the draconian law without broader public consultation, an opinion poll conducted immediately after the passage of the law in December 2019 found many Indians were sympathetic to it.[1] The Indian state, it seemed, had its ear to the pulse of society and was implementing laws in accordance with social wishes.

A cursory glance at the digital archives of right-wing portals alerted us to the fact that problems afflicting Hindu refugees among India's Muslim-majority neighbours have been in public discussion for a long time since Independence in 1947. However, to enable a more focused organisation of the data, we restricted our attention to the time period March 2019 to April 2020. This focus is appropriate for the present purpose since discussions on the CAA surfaced in the public sphere after the BJP released its 2019 Lok Sabha election manifesto in March 2019 and continued until the protests

against the CAA were withdrawn in the wake of the coronavirus pandemic surging through India in April 2020. As a first step, we classified all the articles which underlined the objectives behind the Citizenship Amendment Bill (later Act, once it was passed in the Parliament) by date of publication, stated objectives and keywords. Next, we examined the core themes that couched support for the CAA. Finally, these justifications were linked back to conceptions about the rule of law in an ethnocracy.

I

Defining an Ethnocracy

Ethnocracy is defined by the development sociologist Oraon Yiftachel (2000) as the specific expression of nationalism 'where a dominant ethnos gains political control and uses the state apparatus to ethnicise the territory and society in question' (p. 730). Yiftachel clarifies that ethnocracies are neither democratic nor authoritarian. Citizenship is unequal and rests on laws that enable the capture of the state by one ethnic group. Ethnocratic states – such as Israel, Sri Lanka and Malaysia – frame policies that rigidify distinctions between: (1) a social group that is considered the core of the nation and (2) groups that are considered peripheral and external to the nation. Three further features distinguish ethnocracies from other regimes: (1) a contest between the dominant ethnos and minority groups over territorial space and the public realm; (2) a rigid ethno-nationalism; and (3) long-term political and economic stratification between ethnic groups.

An ethnocracy has sometimes been contrasted with an 'ethnic democracy', a concept advanced by another Israeli sociologist Smooha (2002). Smooha defines the following conditions that can lead to the establishment of an ethnic democracy: (1) the core ethnic nation constitutes a solid numerical majority; (2) the non-core population constitutes a significant minority; (3) the core ethnic nation has a commitment to democracy; (4) the core ethnic nation is an indigenous group; (5) the non-core groups are immigrants; (6) the non-core group is divided into more than one ethnic group; (7) the core ethnic nation has a sizeable and supportive diaspora; (8) the non-core groups' homelands are involved; (9) a transition from a non-democratic ethnic state has taken place; and (10) ethnic democracy enjoys international legitimacy. Drawing on this work, Jaffrelot (2017: 59) has recently suggested that India increasingly demonstrates a key feature of an ethnic democracy and associated two-tiered citizenship, with the Hindu majority enjoying more *de jure* and *de facto* rights than the Muslim minority (Jaffrelot, 2019: 42). Likewise, Adeney (2020) demonstrates the existence of a majority of these conditions for India. As she notes, Hindu nationalists define the ethnoreligious majority as eternal India's heir while rejecting religious minorities as outsiders.

While the formulation of 'ethnic democracy' usefully cautions against an uncritical acceptance of India as a liberal democracy, it also downplays the extent to which democracy in India is reduced to the shell of holding regular elections. As Ghanem et al. (1998) note in their response to Smooha's original formulation of Israel as an 'ethnic democracy', a polity based on the structural exclusion of a section of its populism cannot reasonably be said to qualify as a democracy. To be sure, the dominant ethnic groups in ethnocracies value democracy (at least for themselves). They may even take

pride in their democratic institutions and hold them up as values of which they are proud. But the systemic exclusion of ethnic minorities precludes these polities from being considered democratic. Recent events in India, which have triggered influential bodies such as Freedom House, Economist Intelligence Unit and V-Dem to rethink India's status as a democracy, make it imperative for us to take seriously the category of 'ethnocracy' when reflecting on India's democratic decline.

Having outlined the key features of an ethnocracy and distinguished it from an 'ethnic democracy', the next section illustrates the ways in which political and policy practices under Modi exemplify India's transition from a democracy to an ethnocracy. Against arguments that India has been an ethnic democracy from its inception (Singh, 2000) or that India has never been a liberal democracy (Andersen, 2012), this section outlines the specific ways in which India has *transitioned* to an ethnocracy under Modi. In line with Yiftachel's (2000) formulation of an ethnocracy, I first outline the manner in which Hindus are consolidated as forming the core of the Indian nation and religious minorities are identified as threats. Thereafter, I illustrate the intensifying territorial contests between Hindus and Muslims, the Hindutva ethnonationalism that permeates Indian political discourse today, and the long-standing political-economic stratification between Hindus and Muslims, which threatens to widen under the BJP's rule.

The Rule of Law in an Ethnocratic State

India's steady (though not uncontested) transformation into an ethnocracy raises questions about the rule of law in the country. Warning against conflating the 'rule of law' with 'rule of the good law', Joseph Raz (1979) reminds us that the rule of law is, first and foremost, a political ideal. He goes on to add: '[The rule of law] is not to be confused with democracy, justice, equality (before the law or otherwise), human rights of any kind or respect for persons or for the dignity of man' (Raz, 1979: 221). In other words, the rule of law is quite compatible with the denial of human rights, extensive poverty and widespread inequality, and segregation. Explorations on popular understandings of social order in India's emerging ethnocracy offer provisional glimpses into the political ideals that underpin the rule of law. The 'thin' conception of the rule of law deployed in this article is partially inspired by Raz's scholarship.[2] Such a conception of the rule of law requires officials of the state to impose sanctions against and confer benefits on members of the political community in accordance with codified rules drawing on political ideals, rather than at their own arbitrary discretion. Reflections on the rule of law as a political ideal invite, in turn, a discussion of the political ideals that motivate India's ethnocracy.

The 'thin' formulation of the rule of law deployed in this article may be fruitfully distinguished from a 'thick' formulation of the same concept.[3] A 'thick' conception entails that officials sanction or benefit members of the political community in accordance with universal ideals of democracy, social justice and human rights.[4] 'Thick' conceptions of the rule of law allow officials to flout unjust rules and apply the law in a discretionary manner to the benefit of members in a political community. Like the 'thin' conception, a 'thick' conception of the rule of law is a political ideal. Unlike the 'thin' conception, however, a 'thick' conception intimates a certain kind of political ideal that is grounded in universal philosophies of the social good.

The two conceptualisations of the rule of law are not mutually exclusive, however. After all, if the rule of law is a political ideal, it follows that 'thicker' conceptualisations bleed into 'thinner' ones since ideals can rarely be abstracted from social philosophies. Thus, economists who define the rule of law as property rights or contract enforcement blur the distinction between 'thin' and 'thick' conceptualisations since they defend the rule of law in terms of such social good as economic development.[5] Likewise, political scientists who defend the rule of law in terms of constraints upon the state do so in the hope that it would promote and/or consolidate democracy. In this vein, Francis Fukuyama (2010) identifies the rule of law as foundational to democracy. But even he appreciates that the two are fundamentally different concepts. In his words, 'the government's acceptance of the sovereignty of a pre-existing body of law, representing a social consensus on rules of justice' (Fukuyama, 2010: 35) is key to defining the rule of law. In other words, the accountability of state power to social consensus is central to defining the rule of law. Although this definition appears to offer a 'thick' understanding of the rule of law, it is in fact rather 'thin', as the 'social consensus on rules of justice' need not be at all compatible with human rights, social equality or, indeed, even democracy.

Blending the insights from Joseph Raz and Francis Fukuyama, this article understands the rule of law as about ensuring that legislators, bureaucrats, and others in authority use authority within the constraints of political ideals that are socially shared (rather than in arbitrary, ad hoc and discretionary ways). Such an understanding makes it essential for analysts to recognise the changing norms and the new constraints that frame the functioning of the new ethnocratic state in India. After all, an ethnocratic state is not a totalitarian dictatorship in which sovereigns rule by decree through arbitrary laws and executive fiat. Far from it, an ethnocratic state entails rule by the dominant ethnos, for the dominant ethnos and of the dominant ethnos. Just as a democratic state is theoretically subject to the will and constraints posed by the demos, an ethnocratic state is theoretically subject to the will and constraints posed by the (dominant) ethnos. In ethnocracies, as in democracies, checks and balances on state power, even if they emanate from unsavoury characters, are key to the rule of the law.

Rulers of ethnocratic states are thus subject to constraints imposed by the dominant ethnos. This means that there appears little threat of formal democracy being suspended in India. Indeed, Modi does not tire of proclaiming India's democratic lineage, unlike interwar European fascist demagogues who pointedly rejected democracy. The BJP has respected the mandate of the provincial elections they have lost since their 2019 spectacular re-election to power in Delhi. Modi has declared himself at the service of his people rather than proclaiming himself as the equivalent of a *Fuhrer* or *Duce*. He remains committed to the RSS' Hindutva ideology. His BJP-led government is subjected to checks and balances by its ideological fount. Such checks and balances are likely to prevent even as charismatic a leader as Modi (or his successors) from assuming absolute power.

State Power Subject to Social Consensus: A Hindu(tva) Lineage

The idea that state power must be accountable to social consensus is not a novelty among Hindu traditions. In a benign form, and not unlike other traditions, they refer to myths about just kings who took people's opinions seriously and acted on them, even if it

meant great personal loss – the myth of the Maryada Purushottam Rama banishing his queen on the words of a washerman being one of many such iconic stories (Pattanaik, 2015). This assumes heroic proportions in the legend of Krishna who repeatedly challenges the might of state power: he and the other cowherds of Vrindavan claim the commons which the king of Mathura tries to enclose, fight off demons sent by the state, and eventually assassinate the king and restore the kingdom to the king's father, the just king (Rao, 2005).

Violence is perfectly acceptable in constraining state power. The terrifying tale of Parashuram is testimony to the acceptability of gruesome violence (Bhattacharya, 2022). A Brahmin priest well-versed in the use of the axe, Parashuram was so enraged by the king abusing his authority that he is supposed to have destroyed not only the king and his family but 23 generations of Kshatriyas! (The sociological reality that northern India has hardly any 'indigenous' Kshatriyas, but myriad Rajput communities who most likely descended from Scythians, Parthians and Huns and then claimed dubious lineages tracing back to the sun and the moon perhaps testifies to effective checks on the princely rule by Kshatriyas). Constraints on state power are thus hardwired into Hindu traditions, which find resonance among supporters of the BJP.

The structural basis of the constraints to which state power is subjected is provided by (putative) caste hierarchies. The princely Kshatriya caste is 'polluted' in comparison with the Brahmin caste and considered morally inferior (Dumont, 1981). State power commands political authority but lacks moral authority (not unlike in feudal Europe). Brahmins can extract privileges from state authority and refuse to adhere to state laws with impunity. They act as checks and balances (not always effective) on princely power. These checks and balances celebrated across diverse Hindu traditions lay the foundations of an indigenous conception of the rule of law. Although tensions between the diversity espoused by myriad Hindu traditions and uniformity preferred by Hindutva idealogues are noteworthy, there appears some agreement between them all that societal constraints on state power – central to the understanding of the rule of law deployed in this article – is normatively preferable.

The foregoing detour into Hindu myths and legends is essential to appreciate a well-established tradition that views state power with suspicion and seeks to curb it. State power is merely an instrument to meet societal ends and to maintain order and justice. It is not seen as enjoying an autonomous existence. The existence of these traditions might explain the remarkable lack of attention among ideologues of Hindutva to questions of the state beyond general descriptions of government and politics. To be sure, Vinayak Damodar Savarkar, who coined the term Hindutva in 1923 and presided over the Hindu Mahasabha, a political party 'established for safeguarding issues of Hindus' (Akhil Bharat Hindumahasabha, n.d.), often referred to his party taking over government. Throughout his speeches, documented in *Hindu Rashtra Darshan*, and available online, he obsessed with this theme (Chaturvedi, 2022). But such references were to be expected, given that the Hindu Mahasabha was a political party, contesting elections and eager to form government where possible.

The RSS, which styles itself as a cultural organisation dedicated to 'carry[ing] the nation to the pinnacle of glory' (Rashtriya Swayamsevak Sangh), explicitly shies away from making any remarks at all about taking over the state. Rather, they appear to be

more concerned about limiting the power of the state and urging it to be more responsive to society's needs as determined by the RSS ideologues. Established in 1925, the RSS strives to organise society in accordance with and ensure the protection of the Hindu Dharma, or way of life. The RSS' commitment to Hindutva, or 'Hindu-ness' (Schottli et al., 2015) at the expense of religious minorities is clear from a reading of its 'vision and mission statement' that is publicly available on its website. Invoking the words of its founder, the statement declares:

> The Hindu culture is the life-breath of Hindusthan. It is therefore clear that if Hindusthan is to be protected, we should first nourish the Hindu culture. If the Hindu culture perishes in Hindusthan itself, and if the Hindu society ceases to exist, it will hardly be appropriate to refer to the mere geographical entity that remains as Hindusthan. Mere geographical lumps do not make a nation. The entire society should be in such a vigilant and organised condition that no one would dare to cast an evil eye on any of our points of honour. (Rashtriya Swayamsevak Sangh, 2012)

The RSS' vision and mission statement endorses their founder's reference to India as 'Hindusthan', a cultural term to refer to the land of the Hindus. This use of spelling cleverly manipulates the more common use of the term 'Hindustan', which is of Persian origin and also refers to India as the "land of the Hindus" but in a pluralistic rather than unitary sense. The RSS celebrates Hindu culture as the 'life-breath' of the country, thereby privileging it over other cultural influences that have shaped the country.

A suspicion of government is understandable in the decades after Independence when Congress governments and other political parties that were broadly socialist and secular in orientation ruled the country. What is striking is the continuation of this approach even after their political affiliate the BJP stormed to power in 2014. For example, in his latest Vijayadashami speech, the RSS supremo Mohan Bhagwat justifies limits to the control exercised by the state over Hindu temples and places of worship. Outlining this control as a matter of grave national concern, Bhagwat goes on to argue:

> Temples of South India are fully controlled by the state governments. In the rest of the country some are managed by the government, a few through joint family trusts while some are run by the trusts governed under society's registration acts. Few temples completely lack any system of governance. Instances of misappropriation of movable and immovable properties of temples have come to light. Specific ceremonial guidelines and guiding texts apply to each temple and the deity residing therein. Instances of interference and meddling with those ceremonial matters have also been reported. A non-discriminatory ease of access and opportunity for seeing, worshipping God's shrine, to all devotees irrespective of caste and creed is also not practised everywhere; this should be ensured. It is apparent for all that many decisions regarding the religious code of conduct of the temples are whimsically made without any consultation with the scholars and spiritual teachers and with indifference towards the sensitivities of the Hindu community. The injustices such as the exclusive appropriation of Hindu religious sites for decades and centuries, handing over of the operations to the non-devotees/irreligious, unethical heretics despite the State being 'secular' must be expunged. It is also necessary and only reasonable that

> the operating rights of Hindu temples be handed over to the Hindu devotees and the wealth of the Hindu temples is utilised for the worship of the deities and the welfare of the Hindu community only. Alongside this thought, it is also necessary to devise a scheme to ***once again make temples the epicentre of our social-cultural life*** while ensuring appropriate management and operation of the temples based on the strength of the Hindu society. (RSS, 2021)

Although state power is not unimportant for the RSS, its importance stems from the perspective that the state must be pressed in the service of society. Society here refers not to an amorphous collection of 'people' but to what Bhagwat calls the 'value system of Bharat' (see further discussion of the 'national will' and its moral-legal utilisation in FZ and RS 'Totalitarian law and communal ghettoization' in this special issue). This value system, Bhagwat assures his audience in the address, draws on the Sanatana religion and its Dharmic worldview which has the 'potential to restore the lost balance of the world and promote mutual cooperation and conviviality' (RSS, 2021). He further clarifies that the Sanatana religion and Dharmic worldview are intrinsic to the 'magnanimous Hindu society that has the capacity to accept all', including – he emphasises for good measure, 'members of those communities whose religions have emigrated from outside' (RSS, 2021). For this reason, temples, not the state, should be the epicentre of our socio-cultural life, Bhagwat urges. The state merely exists to facilitate this transition.

Bhagwat's Vijayadashami addresses offer useful insights into the RSS' emerging worldview, including the appropriate role of the state, conceptions of society and the rule of law understood as societal constraints on the state. In his 2019 address, 6 months after the re-election of the BJP, Bhagwat interprets the results thus:

> The society by electing the new government with an increased number of seats has endorsed its past performance and expressed a lot of expectations for the future. The move of the re-elected regime to nullify Article 370 has once again proved that it has the courage to fulfil those expectations and respect people's sentiments and wishes in the interest of the country. (RSS, 2019)

State power relies on the endorsement by society, which expects much from it in turn. The reference to Article 370 refers to a provision in the Indian Constitution that accorded semi-autonomous status to the Muslim-majority state of Jammu and Kashmir. Its nullification chimes with a long-standing demand of the RSS, as illustrated by a further reading of its vision and mission statement that identifies Muslims as potential threats to the Indian nation.

> Conjointly with Independence, parts of Punjab, Bengal, Sindh and the Frontier areas [a reference to Muslim-majority areas that were awarded to Pakistan under the terms of India's violent Partition] were sundered from Bharat [the Sanskrit term for India]; and, four and a half decades after the nation's attaining freedom, [Muslim-majority] Kashmir remains a thorn in the flesh. (RSS, 2012)

The Muslim-majority region of Kashmir, which enjoyed a semi-autonomous status under Article 370 of the Indian Constitution, was singled out as 'a thorn in the flesh'

(despite insurgencies against the Indian state in other non-Muslim-majority regions). The RSS' opposition to this semi-autonomous status was reflected in repeated promises in the BJP manifesto to abrogate it once elected to power. In line with this perspective, Modi's government abolished Article 370 on 5 August 2019, within months of returning to power. Politicians across the state, including supporters of its accession to India, were placed under house arrest, the internet was suspended and people were placed under a lockdown that continues today (Roy, 2019). Even as critics challenged the new law as unconstitutional, the nationalist overtones of the move promised to unite the country behind a single idea of India where there is no special dispensation for different areas (The Economic Times, 2019). The country's only Muslim-majority state was not only deprived of its autonomous status but also stripped of its statehood. It was bifurcated into two Union Territories, to be administered directly from Delhi rather than by elected legislators as other Indian states. Indeed, this move illustrates a strategy to *subordinate* Muslim-majority territories to Hindu-majority ones.

Like the abrogation of Article 370, another much-hyped promise of the BJP had been to amend India's citizenship laws to fast-track citizenship for Hindus and other religious minorities originating in the neighbourhood but to exclude Muslims from its ambit. The party delivered on this promise when it introduced the contentious Citizenship Amendment Bill on 9 December 2019. Forty-eight parliamentarians debated it over 9 hours in the Lok Sabha. But the numbers were heavily stacked in its favour as the BJP and its allies comfortably got the Bill passed, under the able stewardship of Home Minister Amit Shah.

II

The Citizenship Amendment Act

To its supporters, the CAA was a benevolent piece of legislation. It would allow religious minorities from three neighbouring countries to fast-track their citizenship applications in India. The law was framed as beneficial to communities who faced persecution in their respective countries. The choice of the three countries whose religious minorities were privileged by the legislation added to the alleged benevolence of the legislation which named Hindus, Buddhists, Jains, Christians, Sikhs and Parsees as its beneficiaries. The three countries were India's Muslim-majority neighbours Pakistan, Afghanistan, and Bangladesh. Because of its focus on religious minorities in Muslim-majority countries, the Act excluded Muslims from those countries as worthy of fast-tracking their citizenship application in India. Indeed, a key feature of the recent amendments to citizenship laws is that 'one religion – Islam – is put on a lower footing than others' (Khosla and Vaishnav, 2021: 113). Under the terms of the amendment the six named religious communities from Pakistan, Afghanistan and Bangladesh can apply to obtain Indian citizenship after 5 years of residing in the country, while Muslims must wait 11 years. The amendment thus makes naturalisation harder for Muslims than for others.

The CAA is indeed a curious piece of work. Framed as a legislation to provide succour for religious minorities in the neighbourhood, it weaponises their persecution to determine inclusions and exclusions in India's political community. It applies provisions for protective discrimination within the Indian constitution to religious minorities outside

the country. Its framers self-consciously sought to expand the ambit of Indian citizenship and bring religious minorities persecuted by Muslim-majority countries within its embrace. It defies the logic of static citizenship based on birth and residence and embraced, instead, an expansive view of the political community that blurred national boundaries. On paper, it seems a progressive law that promised to ameliorate the condition of beleaguered communities. In Shah's utterances and given the BJP's ideological predilections, the CAA forebode disaster.

The CAA was to be followed by the enumeration of a National Register of Citizens (NRC). Indians would have to prove their citizenship by providing certain documents so that they could be listed on the NRC. Failure to do so could result in detention as an 'illegal immigrant' and possibly deportation. An enumeration of the NRC had already been undertaken in Assam, and the results published in August 2019 confounded everybody.[6] Almost 2 million of the State's 33 million residents found themselves excluded from the NRC.[7] Hindus made up at least 40% of the exclusions, thus running the risk of being designated 'illegal infiltrators'. Just over a quarter were Bengal-origin Muslims, against whom accusations of being 'illegal infiltrators' were frequently labelled. The remainder of the exclusions was made up of Assam's myriad indigenous communities who shared syncretic practices that straddled various faith traditions. Refusing to accept these results, the BJP, which also ruled Assam, insisted that a fresh NRC be conducted. The number of exclusions was too low for a State that seemed flooded with illegal immigrants, party supporters claimed. Muslims, rather than Hindus and others, made up these illegal immigrants, so how could they be a minority among the exclusions, the BJP questioned. A fresh NRC, to be implemented across India, was required. For good measure, the CAA would ensure that Muslims were excluded, and everyone else included, whenever the brand-new nationwide NRC was launched.

Home Minister Amit Shah himself had clarified the chronology with characteristic clarity.[8] On April 23, in a video released by the BJP, Shah urged his audience to understand the 'chronology' (using that specific word), 'First, we will bring forth the CAA, then we will implement the NRC', specifying that refugees had nothing to worry about, but infiltrators did. To everyone familiar with BJP-speak, 'refugee' was a coded term for Hindus, and 'infiltrator' a similarly coded term for Muslims. On May 1, at another election rally in West Bengal, Shah was at it again: 'First we will pass the Citizenship Amendment bill and ensure that all the refugees from the neighbouring nations get the Indian citizenship. After that NRC will be made and we will detect and deport every infiltrator from our motherland'. In this speech, Shah added Jains and Christians to his original list of Hindus, Buddhists and Sikhs, but studiously refrained from including Muslims. Shah repeated this promise to promised parliament. Indians would now have to prove their citizenship by providing certain documents so they could be enlisted in the NRC. Failure to do so could result in detention as 'illegal immigrant' and possibly deportation (Yadav and Jaiswal, 2022). It was here that the CAA would kick in.

The Will of the Ethnos: Societal Justifications for the CAA

Hindus, Sikhs and other religious groups listed in the CAA who might be excluded from the NRC due to a failure to supply their documents would nevertheless be included in the

register as citizens. The same privilege would not be extended to the Muslims who might find themselves similarly excluded. Along India's eastern frontier with Bangladesh, this could have catastrophic results. Population flows resulting from the demands of Assam's plantation economy and Bengal's land hunger, the violence of the 1947 Partition, and the genocide launched by the West Pakistani military in East Pakistan, together have resulted in Muslims, Hindus and others criss-crossing the region and living in environmentally precarious habitations, often as refugees. By discriminating against Muslim refugees, the CAA opened the door to institutional segregation of Muslims.

The CAA's imbrication with the NRC threatened populations whose claim to citizenship rested less on documentary evidence and more on physical presence. India's environmentally fragile eastern borderlands faced floods, cyclones and other natural calamities that cared little for the documentary evidence of its citizens. So, it was not uncommon for citizens to lack the documentation that would supply proof of citizenship. The CAA would lawfully privilege Hindus, Sikhs, Buddhists, Jains, Christians and Zoroastrians while discriminating against Muslims and others.

It was not enough under the CAA to supply documents proving citizenship. Local officials would have to vouch for the veracity of the documents. They were empowered to identify documentation as fake even when all the paperwork might be available. Indeed, without their intervention, the law ran the risk of being just another toothless legislation that could be undermined by corruption and fraud, it was argued. The authority conferred on local officials certainly exceeded a 'thin' conception of the rule of law but was justified as being necessary to ensure that the spirit of the CAA and the broader political ideal of an ethnocratic India that underpinned it was respected.

The broader political ideal and the attendant social consensus can be gauged from an analysis of the popular justifications expressed in favour of the CAA. An investigation into 81 articles produced by *OpIndia* and *Organiser* between the period March 2019 and April 2020 is illustrative. Three broad types of justifications were offered in the pages of these journals in support of the CAA: (i) the need to control the country's population; (ii) the urgency to expel illegal immigrants; and (iii) the persecution of religious minorities in India's neighbourhood. It was the third type of justification that tended to be the most widely prevalent.

The expectation that the CAA will provide succour to Hindu religious minorities in Muslim-majority Afghanistan, Pakistan and Bangladesh informs much of its popular support. The additional consideration for Buddhist, Jain and Sikh minorities bolsters the expectation that the CAA redresses the injustices suffered by followers of so-called Indic religions by Muslim majorities. The extension of the CAA's ambit to Zoroastrians and Christians – followers of monotheistic religions whose origins can be traced to lands outside of India – is deployed by supporters of Hindutva as evidence of the magnanimity of the Hindus as well as advancing the view that Muslim lands are unsafe for non-Muslims.

The popular will of the Hindu *ethnos* was not far to seek. Twenty-one out of 22 *OpIndia* columns and 48 out of 59 *Organiser* columns supportive of the CAA advocated it in the belief that the legislation would ease the suffering of persecuted minorities in India's neighbourhood. Article after article refers to the necessity of the Act to enable 'persecuted' Hindus and other minorities from Muslim-majority countries to fast-track

their citizenship (Opindia, 2019a) and declares it a humanitarian rather than a communal act (Organiser, 2019a). India is seen to have 'traditional responsibilities' towards Hindus victimised in the neighbourhood (OpIndia, 2019b): it is India's 'civilisational duty' (Organiser, 2019b) to provide shelter to persecuted Hindus. One article notes that the Hindus being persecuted in India's neighbourhood were in fact historically stigmatised as 'lower caste' and 'untouchable', thereby seeking to appropriate the language of protective discrimination in support of the CAA (OpIndia, 2019c). Another claims that scholar-statesman Bhim Rao Ambedkar, who steered India's republican constitution to fruition would in fact be happy with the CAA since it fast-tracks citizenship for Hindu refugees, who tend to be overwhelmingly Dalit (Organiser, 2019c). The broad-based support for the CAA provided not only the context but the motivation for the state to enact the CAA within 7 months of its re-election.

Religious Minorities in Islamic Polities. A recurring theme in the justifications offered by columnists in both *OpIndia* and *Organiser* for implementing the CAA was the fate of religious minorities in India's three Muslim-majority neighbours. The legally privileged status of Islam in each of the three countries was repeatedly invoked, finding a place in Home Minister Shah's parliamentary speech. Pakistan had been an Islamic Republic since its constitution was adopted in 1956. Afghanistan had alternated between an Islamic Republic and an Islamic Emirate since 1992. Bangladesh had established Islam as the state religion in 1988. The official status accorded to Islam in the constitutions of the three countries was deployed as evidence for the structural discrimination against religious minorities that warranted the CAA. The Hindu *ethnos* appeared to want to hold its Muslim minority responsible for the actions of Muslim majorities in the neighbourhood.

Beyond the legal privileging of Islam in the constitutions of the three countries, the proponents of the CAA referenced the decimation of religious minorities in Afghanistan, Pakistan and Bangladesh over the last century. Afghanistan's miniscule Hindu and Sikh population found themselves further beleaguered after the Taliban took over the country and compelled them to wear identification marks to distinguish themselves from the Muslim majority. The near-total expulsion of Hindus and Sikhs from the area that is today Pakistan in the immediate aftermath of the Partition was another datapoint in the toolkit of the CAA's proponents (ignoring conveniently the similar expulsion of Muslims from what became the Indian States of Punjab, Haryana and Himachal Pradesh). The steady decline of Hindus in Bangladesh was juxtaposed with the increase in the Muslim population of the Indian States of West Bengal and Assam as further evidence of the persecution of Hindus in that country and the alleged appeasement of Muslims in India. The very real troubles faced by religious minorities in India's neighbourhood was quickly weaponised as a means of bullying minorities within India.

Against critics who reminded the supporters of the CAA that the legal privileging of Islam in the constitutions of Pakistan, Afghanistan and Bangladesh had not prevented the persecution of Muslims in those countries, the argument was advanced that Muslims did not face discrimination on account of their religion whereas Hindus and others were persecuted on account of their beliefs. The persecution of Shias, Ahmediyas and followers of other heterodox Muslim sects, and the discriminatory laws against women that were

justified in the name of Islam in Afghanistan and Pakistan were dismissed by repeatedly harping on the legal privileging of Islam in the three countries. The growing consensus in the Hindu ethnos, at least from readings of columns in *OpIndia* and *Organiser*, seems to be that India should offer refuge to non-Muslims minorities in its neighbourhood as they could never expect to live as equal citizens in Muslim-majority countries.

The Persecution of Dalits. A second argument marshalled in favour of the CAA was the claim that it would benefit Dalits, or members of communities historically oppressed as untouchables. While Hindus in general faced persecution on account of their religion, Dalits faced a double discrimination due to their religion as well as caste. Many stayed on in Pakistan and Bangladesh after the Partition since they did not have a stake in the communal conflagration that engulfed the subcontinent at that point, but could not avoid being caught up in the cross-fire. Subsequent waves of migrations from Sindh as well as Bangladesh were often powered by Dalits seeking refuge from intersectional oppression resulting from religious persecution, caste discrimination and gender-based violence.

To support their case, proponents of the divisive legislation highlighted the travails of Jogendra Nath Mandal, Pakistan's first law minister and a member of a Dalit community from Bengal. Despite his exalted status in the first Pakistan cabinet, Mandal returned to India frustrated with the rapid Islamisation of his adopted country. Recalling Mandal's initial support and eventual disenchantment with Pakistan, numerous BJP leaders including the Chhatisgarh Chief Minister Raman Singh, Union Human Resource Development Minister Smriti Irani and the boss of the BJP's IT cell Amit Malviya urged support for the CAA among Dalits, reminding them that they faced discrimination in Pakistan on account of their religious faith.

An article in *Organiser* went a step further to speculate that BR Ambedkar, the Chairperson of the Drafting Committee of the Indian Constitution, would have supported the CAA (Organiser, 2019c). The article cited a public appeal from Ambedkar in November 1947 to Dalits in Pakistan to make their way to India as quickly as they could. Trusting the Muslim League, the party which governed Pakistan at that time, was fatal, the article quoted Ambedkar as telling his audience. The article then praised Ambedkar's proposal for an exchange of population between India and Pakistan, similar to that between Greece and Bulgaria in the wake of the dismantling of the Ottoman Empire. The article concludes by reiterating the assumption that India is the natural home for all Hindus, including Dalits.

Hindu Zion. The passage of the CAA and the broad-based support for it is anchored in what appears to be a growing public consensus that India is a Hindu Zion. It is, furthermore, publicly accepted that Hindus and non-Muslim minorities can never be safe in Muslim-majority nations. Detailed statistics on the decimation of non-Muslim populations in Pakistan and Bangladesh are produced to cement this public perception. The insertion of 'Islamic Republics' in the constitutional names of Pakistan and Afghanistan is mobilised as evidence of the structural marginalisation faced by non-Muslim minorities in these countries. Faced with such persecution, it is natural – the argument goes – for them to seek refuge in India.

The ethnocratic justification for perceiving India as a natural home for Hindus is complemented by the perception that they face discrimination at the hands of Muslims wherever the latter are in a majority and hold power. The premise of India as a Hindu Zion scaffolds such expectations from the CAA. That India is the natural home also for adherents of other so-called Indic religions – religions whose birthplace can be traced within an expansive understanding of India – further bolsters this premise.

The promise of a Hindu Zion is extended only to Hindu minorities from Muslim-majority countries. It is expectedly not extended to Rohingya Muslim minorities fleeing persecution from Buddhist-majority Myanmar, where Buddhism has been the state religion since 1961. But it is also not extended to Hindu minorities fleeing persecution from Buddhist-majority Sri Lanka, whose constitution provides Buddhism 'the foremost place' and enjoins upon the state to protect and foster the 'Buddhist Sasana'. While creating India as a Hindu Zion, the CAA reflects the view of the Hindu ethnos that Hindus are only persecuted by Muslims and not others.

Consolidating the Ethnos

The rule of law is about ensuring that states exercise authority to further political ideals that are socially shared (rather than in arbitrary, ad hoc and discretionary ways). Such ideals also constrain the authority of states. By reducing the scope of arbitrary authority, the rule of law enables predictability and transparency. Although these qualities that have come to be associated with democracy as a normative good, the rule of law is not entirely absent in other sorts of polities. Authoritarian regimes are often careful not to undermine public opinion or overrule well-established social norms. Similarly, ethnocratic regimes (such as Israel, Estonia and Sri Lanka as well as Apartheid South Africa) too operate on the basis of respecting at least some social norms and subjecting themselves to (albeit limited) constraints of public opinion.

As India turns ethnocratic, the rule of law is mobilised not so much towards establishing a totalitarian or authoritarian state but a state which is subjected to checks and balances from the dominant *ethnos*. The dominant *ethnos* which constrains state power in ethnocratic India is unmistakably Hindu. The state *ought to* promote and defend Hindu interests, failing which challenges to it are legitimate. The terrifying slogan 'Iss desh per wohi raj karega jo Hindu hit ki baat karega' (only those who promote Hindu interests will be allowed to rule India) captures the essence of this sentiment.

Crucially, the rule of law in ethnocracies does not merely reflect dominant ethnos. They also create them. Ethnic identities are necessarily heterogenous. Sri Lanka's Sinhalese speakers comprise numerous faith traditions, social classes and caste identities. Israel's Jews are divided on the basis of their religiosity (or not) and regions of origin (Mizrahi or Ashkenazi). White people in Apartheid South Africa spoke numerous different languages, adhered to a variety of sects and claimed origins in different parts of Europe. The ethnocracies in each of these countries mobilised the rule of law (Sinhala Only, Israel's Law of Return, South Africa's Apartheid) flattened existing hierarchies and diversities within existing ethnic groups to consolidate their dominance.

The CAA achieves a similar function. Its approval of six religious identities (Hindu, Buddhist, Jain, Sikh, Christian and Parsee) whose adherents are allowed the privilege of

fast-tracked citizenship does three things. First, an overarching non-Muslim identity is generated into which adherents of the six mentioned faiths are subsumed. Second, the legal consolidation of Hindu, Buddhist, Sikh and Jain affiliations as an overarching Dharmic identity is achieved. Third, internal diversities within each of the six religious identities are flattened.

The flattening of the enormous heterogeneities within each of the six religious communities approved for fast-tracked citizenship is the most immediate outcome of the CAA. No religious identities other than the six above are recognised, as a result of which communities which might have identified themselves in alternative terms (followers of Adivasis religions, or the myriad faith traditions of the Bengal Delta) are compelled to straitjacket themselves within one of the approved religions. In many cases, such straitjacketing is welcomed. For Dalit refugees, who bear the brunt of the puritanism of both Islam and Hinduism, the CAA offers a welcome opportunity to affiliate with and associate with an undisputed Hindu identity.

The consolidation of an overarching Dharmic identity within which Hindu, Buddhist, Sikh and Jain affiliations are subsumed is another consequence of the CAA. To be sure, the separate identities of Christians and Parsees are recognised and established. But these are numerically insignificant and easily marshalled in favour of narratives of Dharmic generosity. Chillingly, an overarching non-Muslim identity is generated into which adherents of the six mentioned faiths are subsumed. The Muslim 'other' is reified not only in relation to Hindus but everyone else. The Hindu–Muslim binary is rendered obsolete as a new binary between *Indians* and Muslims is erected, reflecting the enduring suspicion harboured by the Hindu ethnos against Muslims.

These enormous consequences of the CAA appear to evidence the arrogation of state power to itself. These seem to exemplify the expansion of state power rather than constraints to it. The associated paraphernalia of the National Register of Citizens and the National Population Register will only enhance the legal basis of state intervention in marking out individuals as legitimate citizens or illegitimate aliens. It might be argued that a dominant Hindu ethnos is being brought into being by the state, rather than holding it accountable. While I do not disagree with any of these interpretations, what is interesting here is the shared social ideas about the privileged place of Hindus in India that enables the state to enact such laws and bring into existence the associated paraphernalia. The BJP did not sneak in this legislation through the back-door of Parliament. It contested the 2019 elections on the promise that it would enact the CAA if re-elected and won an astounding majority on that basis (alongside other items on its manifesto that have been core to its political identity since 1980). That the BJP-led government hastened to enact the CAA within months of coming to power is therefore barely surprising and indicative of the social support it knew this act would enjoy. This social basis both frames and constrains the functioning of India's emerging ethnocracy.

The social expectation that the state will respect and promote the interests of the Hindu ethnos and be responsible to it means that the state will be unable to exercise unchecked arbitrary authority. The state is responsible to the Hindu ethnos for realising a political ideal that increasingly seems to be socially shared. The Hindus are recognised as the core group of the Indian nation while the Muslims are reified as threats. A pervasive ethno-nationalism substantiated the political ideal that frames as well as constrains the

BJP. The political and economic exclusion of Muslims, well underway under previous governments, is exacerbated so the dominance of the Hindu ethnos is consolidated and unchallenged.

III

Hindus as the Core Group of the Indian Nation

In May 2014, the BJP decisively won India's General Elections and stormed to power. BJP leader Narendra Modi was anointed India's Prime Minister. Soon thereafter, Modi took the unprecedented step of celebrating his victory on the banks of the River Ganga in the holy town of Varanasi. Varanasi was the parliamentary constituency that elected him, so it was to be expected that he would thank his voters. However, the spectacle of the Prime Minister, accompanied by senior colleagues who would go on to assume key cabinet portfolios, unapologetically flaunting his Hindu nationalist credentials was a clear break with the past. To be sure, India's heads of government – even when personally agnostic – frequented places of worship on key occasions and regularly greeted the country on religious occasions but the political association with religion as an *inaugural act* was rare. A few weeks further, addressing India's parliament for the first time as Prime Minister Modi referred to '1200 years of servitude' that Indians had suffered (Ghose, 2014), making a not-so-subtle reference to the presence of Muslims in the Indian subcontinent and associated accounts of conquest, plunder and domination by invaders of the Islamic faith.

Modi's early actions offered a glimpse into his future years in office in which Hindus would come to be considered the core group of the Indian nation and religious minorities regarded as threats. The most important contribution to India's ethnocratic transition stems from the ideological role of the RSS in government. In 2019, the RSS claimed to have 85,000 *shakhas* or cells in which members are trained in physical combat and organisational ideology (on the *shakhas*, see Anderson and Damle, 2018; Kanungo, 2002; Noorani, 2019), and over 15 formal affiliates, including the Akhil Bharatiya Vidyarthi Parishad (ABVP), and Bharatiya Mazdoor Sangh (BMS), which are the largest student and workers' unions in India, respectively (Bhatty and Sundar, 2020: 633).

Modi himself was a member of the RSS from 1971 to 1987, and has credited it with having shaped his own political and cultural views (Mukhopadhyay, 2013). Forty-one of 66 cabinet members in Modi's first government were drawn from the RSS. That proportion increased in his second government: now 38 of 53 members of Modi's cabinet have a background in the RSS in Modi's second government (Pandey and Arnimesh, 2020). Such influence of the RSS on any government in Independent India is unprecedented.

Muslims (and Others) as Threats to the Indian Nation

The RSS' 'vision and mission statement' is replete with allusions of territorial contests between Hindus and other religious minorities. The partition of the country between Hindu-majority India and Muslim-majority Pakistan continues to be a source of anxiety for the RSS: the loss of Muslim-majority territories is invoked in a bid to

safeguard the Hindu territories that comprise independent India. The statement goes on to identify Muslims and Christians as potential threats to the Indian nation.

> Continuous efforts have been there to make Assam a Muslim majority province. Likewise, no-holds-barred efforts to proselytize by Christian missions continue unabated. Even armed revolt has been engineered (e.g., in Nagaland) to carve out independent Christian provinces. Such activities receive ready support and unlimited funds from foreign countries and agencies keenly interested in destabilizing Bharat for their own ends. (RSS, 2012)

RSS anxieties over the loss of Muslim-majority territories to Pakistan shape the government's attitude towards Muslims in Hindu-majority states as well. The emphasis on Assam in the 'vision and mission statement' is noteworthy: it is borne of the claim that its 25% Muslim minority would overwhelm the State over time. It is therefore unsurprising that, as Khosla and Vaishnav (2021) have detailed, Assam has emerged as a key territorial battleground over the recent attempts at enumerating a National Register for Citizens (NRC) and the amendments to citizenship laws in the country.

An emerging campaign against a so-called 'land jihad' neatly illustrates the territorial dimension of India's emerging ethnocracy permeating neighbourhoods and localities across the country (see also the more extensive discussion of 'land jihad' in FZ and RS 'Totalitarian law and communal ghettoisation' in this special issue). Claims of a 'land jihad' are beginning to permeate electoral campaigns in Assam (even as this piece is written) as a BJP leader promises the electorate:

> We are going all out against 'land jihad'. Certain elements have grabbed land from us in lower and middle Assam. They have not even spared the monasteries. This will definitely feature in our manifesto. (Times of India, 2021)

The bogey of 'land jihad' targets Muslims who seek to buy property in Hindu-majority neighbourhoods. It has been invoked in regions as far afield as Jammu (north-west), Meerut (north), and Bangalore (south-west) not only by such RSS affiliates as the Vishwa Hindu Parishad but also independent citizens' forums and journalists like Sudhir Chaudhury of the popular Zee News. The allegation is that Muslims buy property in Hindu residential areas with the purpose of reducing them to a minority. Campaigns against 'land jihad' are couched as efforts to safeguard the Hindu character of neighbourhoods. Protagonists claim that such efforts are indispensable to prevent territories from becoming 'mini-Pakistan', the epithet commonly used to describe Muslim-majority localities across Indian cities (Khan, 2015).

A Pervasive Ethno-nationalism

Ethno-nationalism, rooted in Hindutva, has come to pervade political discourse since Modi's ascendance to power. Modi described himself as a 'Hindu nationalist' in a rare interview on the eve of the 2014 elections. The BJP's election manifesto declared that 'India shall remain a natural home for persecuted Hindus and they shall be welcome to seek refuge here' (BJP, 2014).

Such Hindutva ethno-nationalism is distinct from secular nationalism, which draws on an *Indian* rather than a Hindu identity, and constitutes the second element of the emerging ethnocracy. Hindutva ethno-nationalism targets religious and social minorities as internal enemies as much if not more than external enemies. Thus, Muslims and (to a lesser extent) Christians find themselves at the receiving end of Hindutva ethno-nationalism. Indeed, anyone who does not conform to the image of a good Hindu can find themselves singled out as the internal enemy. In recent years, the list of internal enemies has come to include Dalits who have been historically oppressed as 'untouchable'; liberals and leftists; activists who have raised issues of the environment and human rights; and anyone else perceived to be 'anti-national'. Dissent is muzzled, increasingly through official edicts: the list of people incarcerated on one pretext or the other have included 80-year-old human rights activist Varavara Rao and Disha Ravi, a 21-year-old environmental activist among others.

The BJP's first term in power witnessed the proliferation of 'cow protection squads' across the north and west of the country (Human Rights Watch, 2019). The cow is sacred to many Hindus, and has been a symbol of Hindu identity politics since the 19th century.[9] Since 2015, cow protection have accused at least 44 people of slaughtering bovines or eating beef and harassed, humiliated, beaten and even killed them. Most of the victims were from Muslim or Dalit (historically stigmatised as 'untouchable') communities, both of which depend on cows for their livelihood and sometimes food (Biswas, 2015). A ghastly episode of lynching was unveiled in September 2015 when Mohammed Akhlaq, a Muslim man in Dadri village of western Uttar Pradesh was lynched on the suspicion that he had stored beef in his fridge (The Indian Express, 2015). The allegations were later found to be false, as the meat stored in the fridge was not beef but goat: the attackers taken into custody not because they killed Akhlaq but because they killed him for the wrong reason. Another horrifying episode emerged in July 2016, when seven Dalit labourers who were carrying cattle carcasses in the village of Una were rounded up by cow protection squads, stripped, dragged through the streets and thrashed with iron rods (Kateshiya, 2016). In a telling measure of the impunity they enjoy, some of the members of the squad filmed the entire episode and uploaded it on social media as a warning to all those who slaughter cows and eat their meat.

The cow protection squads exemplify Hindutva ethno-nationalism under the BJP. In several States, they have taken it upon themselves to enforce local laws prohibiting cow slaughter. Some of these laws were introduced by Congress governments but rarely implemented. The cow protection squads have made cattle slaughter a central plank of their ethno-nationalist agenda, specifically targeting Muslims (and sometimes Dalits). Muslim cattle breeders and transporters are systematically targeted: Jaffrelot (2019) reports that 24 of the 28 people killed by cow protection squads have been Muslim. The acts of lynching are typically accompanied by perpetrators forcing victims to chant Hindutva slogans such as 'Jai Shri Ram' (Hail Lord Ram) and 'Gau Mata ki Jai' (Hail the mother cow). Defending the cow protection squads, the chairperson of the state-run National Cow Commission – who also happens to be a member of the RSS – praised their 'help in legal transaction of cows' (IndiaSpend, 2021).

Another illustration of the rigid ethno-nationalism in India today comes from the contentions over inter-religious relationships, decried as 'Love Jihad' (see also extensive

discussion of this example in YS and LJ 'Legislation as disinformation' in this special issue). Love Jihad refers to the alleged strategy of Muslim men wooing and marrying Hindu women with the aim of then converting them to Islam, thereby waging a demographic *jihad* (crusade) against Hinduism. In September 2014, soon after Modi took office as Prime Minister, the RSS published cover stories on 'love jihad' in its weekly mouthpieces – the *Organiser* in English and *Panchjanya* in Hindi. Gupta (2023) notes that *Panchjanya's* cover depicted a man wearing a traditional Arab headdress, the *kaffiyeh*, sporting a beard in the shape of heart, and donning sinister sunglasses in which red hearts were reflected. The magazine asked on the cover, *pyar andha ya dhandha*, which translates in English to ask 'is love blind or a trade?' The publication goes on to warn its readers against licentious Muslim men taking advantage of Hindu women's vulnerabilities in the context of the (marginal) decline in India's Hindus as a proportion of the population. The rhetoric of 'love jihad' has triggered a series of campaigns documented by two investigative news websites *Cobrapost* and *Gulail.com* and reported by Jaffrelot (2019: 58–59) in which RSS activists and BJP politicians claim to have rescued Hindu women from the clutches of Muslim men to protect not only their individual honour but also India's national prestige. The campaign culminated in a law passed by the Uttar Pradesh State Government against "unlawful" religious conversion, which is widely recognised as a code against conversions to Islam and Christianity (see also SS 'Acts of Violence?: Anti-Conversion Laws in India' in this special issue).

In November 2019, barely 6 months after re-election, the BJP's ethno-nationalist agenda received a major fillip when India's Supreme Court proclaimed in their favour while announcing a verdict on the 150-year-old dispute in the northern town of Ayodhya. The dispute was over a tract of land claimed as the birthplace of Rama, hero and deity to many Hindus. A mosque had been built on that land by a Mughal general back in 1528: Hindu mobs exhorted by BJP leaders had pulled the mosque down in 1992. The Hindus claimed the tract of land as theirs and proposed to build a grand temple to honour Rama, while the Muslims claimed it as theirs so they could rebuild the demolished mosque. By ruling in favour of the Hindus, the Court effectively legalised mob vandalism against the mosque, while handing over a carte blanche to the Hindus. The Chief Justice of the Supreme Court responsible for the verdict was subsequently rewarded by being nominated as a BJP nominee to India's upper house of Parliament.

On 5 August 2020 – exactly 1 year after the Indian government repudiated the autonomous status of the state of Jammu and Kashmir – the Prime Minister personally consecrated the Ram temple in Ayodhya. In a spectacular ceremony televised across the world, he performed the *bhumi poojan,* a ritual to worship the land on which the temple was planned to be constructed, led by Hindu priests and accompanied by other legislators, including the Chief Minister of the Uttar Pradesh, the State in which Ayodhya is located. The sight of the Head of Government of a secular democracy performing foundational rituals at a religious site that had been the bone of contention between the country's principal religious communities exemplified the distance India has travelled away from being a liberal democracy. From here on, India's democracy – nominally secular not because it enforced a strict separation between religion and state but because it maintained equidistance between the state and the country's numerous

faiths – was firmly distancing itself from its liberal pluralistic roots towards a more explicitly ethnic orientation.

Almost a year later, in March 2021, the Kumbha Mela, one of the world's largest devotional congregations commenced in the northern town of Hardwar. Despite worries voiced by the Prime Minister's own party colleagues that the congregation would be a COVID super spreader for COVID, it was allowed to progress unhindered for fear of annoying Hindu saints affiliated with *akharas*, monastic orders that dot the countryside across northern and western India. For over 6 weeks, millions of devotees congregated on the banks of the River Ganga without any face coverings and scant regard to social distancing. Indeed, the dates for the congregation was brought forward (it had initially been planned for 2022) at the behest of the saints despite the raging pandemic on account of opaque astrological formulations considered auspicious according to the Hindu calendar. The surge in COVID cases in the country that followed was brutal by all accounts.

Political-Economic Exclusion of Muslims

The third element of India's emerging ethnocracy has deeper roots: the political and economic exclusion of Muslims. As far back as 2006, a commission appointed by the Congress-led United Progressive Alliance (UPA) government, noted important disparities between Hindus and Muslims.[10] Worker participation rates among Muslims lagged that of Hindus by almost 10% points (Sachar Commission, 2006: Annex Table 5.5, 341), but outstripped them by nearly 10% points in informal manufacturing (ibid.: Annex Table 5.6, 342), 8% points in petty trade (ibid.: Annex Table 5.7, 343) and 15% points as precarious self-employed workers (ibid.: Annex Table 5.8, 344). Literacy rates for Muslims lags that for Hindus, including the historically oppressed Scheduled Castes and Scheduled Tribes (ibid.: 310). Fewer proportion of Muslims completed primary school (ibid.: Annex Table 4.6, 295) or middle school (ibid.: Annex Table 4.7, 296) than any other social group. Enrolment rates for Muslim children (6–14 years) was almost 10% points lower than for the national average (ibid.: Appendix Table 4.3: 292). The mean years of schooling for Muslim children (7–16 years old) was lower than for every other social group including the Scheduled Castes and Scheduled Tribes (ibid.: Appendix Table 4.2: 290).

Muslim under-representation in military, bureaucratic and political positions has remained a long-standing trend. Jaffrelot (2019: 46) details the abysmally low levels of Muslim presence in the armed forces and in the public sector, which continues to provide employment to most Indians. Their presence in the higher echelons of these institutions was even lower. Adeney and Swendon (2019:16–19) document the *worsening* representation of Muslims in legislatures, judiciary and administrative positions. Muslim representation in India's cabinets, the foremost decision-making body in India, have declined (Adeney, 2020: 10).

In a historical perspective, the responsibility for much of the political and economic exclusion must be placed on the Congress and other parties that ruled India since Independence. However, these parties at least paid lip-service to such narratives as 'secularism' and 'social justice' that signalled a commitment to include all sections of India's

population within the political community. In his first term, Modi did promise to usher 'development for all' (via the slogan *sabka saath sabka vikas*),but allowed Hindutva to emerge as the defining characteristic of his government, a trend that, as we have seen, has been consolidated after the BJP's re-election in 2019.

Conclusion

An ethnocracy has taken root in India. As this essay demonstrates, the RSS, the ideological well-spring of the BJP, believes that Hindu culture is the 'life-breath' of India (RSS, 2012). It has neither repudiated nor distanced itself from statements of previous leaders who regarded Muslims and Christians as culturally alien since they adhere to a faith with origins outside the territory that makes up India. Since the onset of BJP rule, conflict between Hindus and Muslims has intensified, illustrated by the incidences of lynching since 2015, the introduction of the CAA in 2019 and the 2020 rioting in Delhi. Stripping Jammu and Kashmir of both statehood and constitutionally guaranteed autonomy has signalled the assertion of Hindu-majority India over its only Muslim-majority state. The construction under official auspices of the Ram Temple at Ayodhya at the same site where Hindu mobs demolished a mosque in 1992 exemplifies the territorial conquest and occupation by the dominant Hindu ethnos over the Muslim minority. A rigid ethno-nationalism, rooted in Hindutva, is unmistakable. Such ethno-nationalism builds on, and intensifies, the economic deprivation and political exclusion faced by Muslims relative to other religious groups.

Concomitant with the development of the ethnocratic state, a new rule of law is emerging in India, seeking to fashion a state that exists in service of a newly crafted Hindu ethnos. Indeed, India's ethnocracy is unlikely to be accompanied by a formal suspension of democracy. As this article shows, a rich endogenous lineage of holding state power accountable to socially shared values exists in the country, celebrated in Hindu mythology and endorsed by the RSS. Discriminatory legislations such as the CAA find widespread resonance and illustrate the ways in which the state in India has to legitimise its actions through recourse to popular justification. Such justifications, as evidenced through narratives presented in such outlets as *OpIndia* and *Organiser*, are anchored in imaginations of India as a natural homeland for Hindus and other religions celebrated for their Indic origins while accommodating select monotheistic religions such as Christianity and Zoroastrianism. These imaginations are being continually deepened and expanded, as an analysis of ongoing political ideals in India reveal.

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Notes

1. See here: https://news.abplive.com/news/india/abp-cvoter-survey-on-citizenship-act-62-indians-support-caa-65-want-pan-india-nrc-too-1129900
2. To be sure, vibrant debates on "thin" formulations, associated with such scholars as Jeremy Waldron (2012), Lon Fuller (1964) and Joseph Raz (1979) have considerably enriched our understanding of the ways in which rules constrain the form by which a state is to be governed. It is Raz's work, however, on which this article draws.
3. See, for example, Tamanaha (2004); Møller and Skaaning (2014).
4. 'Thick descriptions of the rule of law are associated with the works of Ronald Dworkin (1985), Richard Epstein (2012) and Amartya Sen (2010).
5. See Haggard et al. (2008) and North and Weingast (1989) for a flavour of this literature.
6. https://thewire.in/rights/detention-criminalisation-statelessness-the-aftermath-of-assams-nrc
7. https://theprint.in/theprint-essential/hindus-arent-our-enemies-why-final-nrc-is-not-what-bjp-promised-and-envisioned/324713/
8. https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so
9. The Indian Constitution, in its non-justiciable Directive Principles of State Policy, urges States to protect cattle and take action against the illegal slaughter and smuggling of cattle. The animal can only be slaughtered in licensed abattoirs. State Governments across parties have instituted laws to protect cattle, but have usually been lax about implementing them. Needless to say, nothing in the Constitution or State governments' legislation permits individuals to beat and kill others in the name of violating or implementing the law.
10. Unless otherwise stated, all data in this section is from Sachar Commission (2006). Social, economic and educational status of Muslim community in India, New Delhi: Government of India, accessed from http://www.minorityaffairs.gov.in/sites/default/files/sachar_comm.pdf

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