

[Working Paper Series: The Protection of Minority Rights in Asia – Part 1]

The Majoritarian Challenge to Minority Rights in India: The Case of Muslims

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Background

India is a deeply diverse and plural country. Although more than two-thirds of India's population (80.7%) is from the Hindu community, it still has large minority populations. According to the statistics published by the Ministry of Minority Affairs, Muslims, Christians, Sikhs, Buddhists, Jains, and Zoroastrians or Parsis are considered minority communities.¹ As per the last census (2011), the percentage of minorities in the country is about 19.3% of the total population. The population of Muslims is 14.2%, Christians 2.3%, Sikhs 1.7%, Buddhists 0.7%, Jains 0.4%, and Parsis 0.006% of the total population.² In other words, every fifth person in India belongs to a minority community. With 142 persons in every 1,000, Muslims remain the biggest minority community in India.

Given India's bloody partition experience (the country was split into India and Pakistan based on religion in 1947), the word "minority" and any special privileges granted to minorities have been subject to intense contestations and interpretations. The clearest proof of this is the contentious debates that took place in the Constituent Assembly (1946-49) over who should be considered minorities and what special rights they should enjoy. For example, a major demand among the representatives from minority groups during the making of the constitution was political representation for these communities. Qazi Karimuddin, a prominent Muslim voice in the Constituent Assembly (CA), advocated for proportional representation to escape what he called the "pervading evil of democracy (that) is the tyranny of the majority."³ Another member of a minority group, Z.H. Lari, also supported the idea of proportional representation so that the parliament can become "the mirror of the national mind" and "minorities will not have grievances about their representation."⁴

¹ Although the Constitution does not define what "minority" means, they are conventionally categorized into two types: linguistic minorities and religious minorities. Section 2, clause (c) of the National Commission of Minorities Act declares six communities as minority communities. These are Muslims, Christians, Buddhists, Sikhs, Jains, and Zoroastrians (Parsis).

² For more, see Government of India, Ministry of Minority Affairs, <https://www.minorityaffairs.gov.in/sites/default/files/MsDP%20%28FAQs%29.pdf>

³ Shefali Jha, "Defending Minority Interest in the Constituent Assembly: Rights vs Representation," *Economic and Political Weekly* 38, no.1 (April 2003).

⁴ Ibid.

Although several members of the CA were sympathetic to the arguments for political representation for minorities, in the end the Assembly decided to scrap all suggestions on political presentation for minorities, particularly Muslims, while it retained the provision of reserved seats for the Scheduled Castes belonging to the Hindu community. The CA offered minorities, including Muslims, a package of “rights”⁵ as part of the bargain.

The Constitution and Minority Rights

While the Constituent Assembly denied minorities representational power in legislatures and services, it formulated various provisions and laws in 1948 under the name “Special Provisions Relating to Minorities” in part XIV of the Constitution. No special rights except cultural and educational rights were offered to minorities.⁶ The fundamental rights of the constitution under various sections guaranteed and protected the educational and cultural rights of minorities. Article 29 protects the interests of minorities by making a provision that any citizen/section of citizens having a distinct language, script, or culture have the right to conserve the same. Article 29 also mandates that no discrimination may be performed on the ground of religion, race, caste, or language.⁷ Whereas, Article 30 provides a host of rights to protect the interests of minorities.⁸ Article 30(2) states that the government should not discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language, while giving aid. There are additional provisions that safeguard and protect the religious freedom of minorities. For example, Article 25(1) ensures freedom of conscience and the right to freely profess, practice, and propagate religion—subject to public order, morality, and other fundamental rights. Significantly, Article 350(A) makes a provision for a special officer for linguistic minorities to be appointed by the president.⁹

Minority Commissions

To ensure better protection of minority rights, the National Congress government in 1992 enacted the National Commission for Minorities Act. Accordingly, a National Commission for Minorities was established in 1993. As per Section 9(1) of the Act, the Commission is mandated to safeguard the rights enshrined in the Constitution for minorities and laws enacted by Parliament and the State Legislatures.¹⁰ This apart, it looks after any specific complaints regarding discrimination and denial of rights and entitlements of minority groups. Apart from the center, state governments have set up their own minority commissions, too.

⁵ Irfan Ahmad, “Are India’s Muslims a minority?”, *Aljazeera*, 2014.

⁶ Srijita Adak, “Minority rights in the Constitution of India,” *IPleaders*, 2021.

⁷ “What is Article 30 of the Indian Constitution,” *Business Standard*.

⁸ *Ibid*.

⁹ G. Ananthakrishnan, “Explained: Who is a ‘minority’ in India? What the Constitution says, how Supreme Court has ruled,” *The Indian Express*, 2022.

¹⁰ Arpit Chaturvedi, “The Need for Institutional Reform at the National Minorities Commission, India,” *Cornell Policy Review*, 2017.

State Policies and Institutions for the Minorities

Beyond constitutional and legal provisions, the central and state governments run a number of schemes and initiatives for the betterment of these communities. Several schemes including scholarships, free coaching, concessional loans, and grant-in-aid for minority educational institutions among others are available for minorities. These apart, there are half a dozen schemes addressing the skills and infrastructural challenges facing minority communities. A noteworthy scheme under the current government is Pradhan Mantri Jan Vikas Karyakram, a multi-sectoral program which covers minority-concentrated blocks and districts and minority-concentrated towns and villages for infrastructural development.¹¹ A major skill development scheme “Garib Nawaz Skill Development” training for minorities has been created to provide short-term job-oriented training to youths belonging to the six minority communities mentioned above. In short, there are scores of schemes and policy initiatives have been adopted by governments to address the needs of minorities.¹² However, these initiatives in reality have grossly failed to fulfill the demands/needs of vulnerable minorities, particularly the largest minority (Muslims) who continue to remain at the bottom of India’s socio-economic pyramid. Weak enforcement, poor state capacity, and structural barriers have gone on to erode the potentials of these schemes, which will be discussed in further detail in the next section. What is more concerning is the fact that minorities routinely face the growing majoritarian onslaught¹³ on every aspect of their lives including food, dress, profession, and place of worship.

A Case Study of Muslims in India

With more than 14% of India’s population, Muslims are only slightly lower in number than the seventh-most populous country (Nigeria).¹⁴ According to a recent Pew report on population growth and religious composition, India has the world’s second largest Muslim population (more than 200 million), surpassed only by Indonesia. Pakistan’s Muslim population is roughly the same size as India’s.¹⁵ Yet, they are a minority in a predominantly Hindu country. Muslims, however, are not a monolithic community. They are deeply diverse, with differences in ethnicity and language, and surprisingly with caste identities similar to Hindus as well as differences in access to political and economic power.¹⁶

Once part of the ruling class for several hundred years including the Mughals, Muslims today remain the most marginalized among all minority communities. One of the most authoritative studies on the socio-economic conditions of Muslims in recent years was the report prepared by the Sachar

¹¹ Under this scheme, 340 multi-purpose community centers, 67 gurukul-type residential schools, 436 market sheds for farmers and artisans, 11 degree colleges, 163 girls’ hostels, 53 it, and 925 school buildings have been built by the government of India in minority-concentrated localities. In the financial year 2019-20, INR 14.70 billion was allocated for this scheme. For more, see Government of India, Ministry of Minority Affairs, *Ibid* op.cit

¹² Ministry of Minority Affairs, “Socio-Economic Facilities to Minorities,” *Government of India Press Information Bureau*, 2018.

¹³ Ali Khan Mahmudabad, “Indian Muslims and the Anti-CAA Protests: From Marginalization Towards Exclusion,” *South Asia Multidisciplinary Journal* 24/45 (2020).

¹⁴ Prabhash K. Dutta, “Who is a minority citizen in India?”, *India Today*, 2022.

¹⁵ Stephanie Kramer, “Population growth and religious composition,” in *Religious Composition of India* (Pew Research Center, 2021).

¹⁶ Lindsay Maizland, “India’s Muslims: An Increasingly Marginalized Population,” *Council on Foreign Relations*, 2020.

Committee in 2006.¹⁷ The government-tasked committee placed Muslims lower than historically oppressed Scheduled Castes and Scheduled Tribes in backwardness. In terms of socio-economic parameters such as education, employment, and literacy, Muslims were nowhere near other designated minorities. Among some of the more startling findings, the report revealed that as many as 31% of Muslims were living below the poverty line, that their representation in the elite civil services, particularly the Indian Administrative Service (IAS) and Indian Police Service (IPS), was a mere 3% and 4%, respectively. Further, the literacy rate for Muslims was far below the national average, and as many as 25% of Muslim children were found to not have access to school education. Acting on the findings and recommendations of the Sachar Committee, the Congress-led United Progressive Alliance (UPA) government in 2007 adopted a series of measures to address the social, economic, and educational backwardness of Muslims.¹⁸ The UPA government set up an Expert Group to propose a diversity index and modalities to address issues of discrimination and backwardness among minority social and religious groups, particularly Muslims.

However, the conditions of Muslims with regard to key indicators have barely improved even though more than 16 years have passed since this report was first issued. On the contrary, some key indicators have deteriorated. For instance, while the share of Muslims in India's police forces was 7.63%, it fell to 6.27% in 2013. After this became a media issue, the government decided to forego the releasing of data on police personnel by religion.¹⁹ The most striking figures are with regards to the IAS and IPS. While the Sachar Committee had noted 3% and 4% of Muslims in the IAS and IPS respectively in 2005, these numbers were 3.32% and 3.19% respectively on January 1, 2016.²⁰ In short, Muslims are precariously positioned on most key socio-economic and educational indicators compared to other religious groups. Even the historically oppressed Scheduled Castes (belonging to the Hindu religion) have moved up on several crucial indicators compared to India's Muslims. Much worse is Muslim political representation, which has seen a sharp decline in recent years, particularly with the rise of the pro-Hindu Bharatiya Janata Party. Since the 2014 general elections, Muslim representation in the Lower House of India's Parliament (Lok Sabha) and several state assemblies has gone down dramatically.²¹

Although Muslims represent more than 14% of India's population, in 2018 they held just 4% of the seats in the Lok Sabha, the lowest since 1957.²² In the 2019 national elections, the number of MPs from the community improved marginally. Only 27 MPs are present in the current Lok Sabha, and the ruling party does not have a single member from the largest minority community.²³ While the BJP fielded just six Muslim candidates from different states, none of them were victorious in the election.²⁴ While poor socio-economic indicators and under-representation remain issues of serious concern for India's largest minority community, the acceleration of majoritarian politics and resultant "othering"²⁵ of Muslims poses the gravest threat to their identity.

¹⁷ Rajindar Sachar et al., *Social, Economic and Educational Status of the Muslim Community of India*, Government of India, 2006.

¹⁸ "Most Sachar Committee recommendations implemented by Centre," *The Economic Times*, 2013.

¹⁹ Zeeshan Shaikh, "Ten years after Sachar Report," *The Indian Express*, 2016.

²⁰ Ibid.

²¹ Christophe Jaffrelot and Gilles Varniers, "The Dwindling Minority," *The Indian Express*, 2018.

²² Rasheed Kidwai, "Need for CVE Program to Engage with Muslim Community," *Observer Research Foundation*, 2018.

²³ "2019 Lok Sabha election results: Only 27 Muslim MPs elected to Parliament, none from the BJP," *Scroll*, 2019.

²⁴ Sameer Khan, "Lok Sabha Election Results 2019: Here's the list of newly-elected Muslim MPs," *The Siasat Daily*, 2019.

²⁵ Kieran Lobo and Gulal Salil, "The Exclusion Explainer: How the Hindu Right 'Others' Muslims," *Economic and Political Weekly*.

The Rise of Hindu Majoritarianism and Muslim Marginalization

Despite facing neglect and discrimination on various counts as vividly documented by the Sachar Committee in 2006, Muslims still enjoyed a certain degree of autonomy and state protection until the Hindu right came to prominence. Successive Congress governments since the 1950s have tried to moderate the majoritarian tendencies of the Hindu right.²⁶ While the Congress indulged in the symbolic appointment of a handful of Muslims to higher positions, the party by and large failed to address the core aspects of Muslim backwardness. However, its tendency to appoint token Muslims into certain higher positions (president, cabinet ministers, etc.) created the rare opportunity for the BJP to accuse the party of “minority appeasement” and anti-Hinduism.²⁷ In fact, the well-meaning Sachar Committee report to alleviate the conditions of Muslims was fiercely opposed and politicized by the BJP, which accused the Congress government of simply trying to appease minorities.²⁸

However, the tables turned against Muslims and other minorities, including Christians, when the pro-Hindu BJP won by a massive electoral landslide in 2014. The BJP’s unprecedented electoral victory in the 2014 national elections, where it secured a majority of seats in the lower house on its own, gave a new lease on life to its Hindu majoritarianism agenda.

After the 2014 electoral landslide, the BJP under Prime Minister Narendra Modi emerged as an unapologetic advocate of Hindutva and the majority community’s primacy in social, political, and economic life. The real game changer was the spectacular rise of Modi, who skillfully combined promises of economic development with Hindu nationalist appeals.²⁹ Not only has Modi reversed the gradual slide of the Hindu right from its back-to-back electoral defeats in 2004 and 2009, the BJP under his leadership has witnessed an unprecedented surge across many regions of the country.³⁰ The pro-Hindu party under Modi won another spectacular mandate in 2019, cementing the base of majoritarianism.

Implications of Rising Majoritarianism

The rise of divisive political rhetoric and increasing deployment of polarization tactics by the Hindu right have brought sharp changes in the national conversation. However, the most troubling outcome is rising incidences of religious violence and gradual marginalization of minority groups, particularly Muslims. For instance, as the portal *IndiaSpend* indicates, as many as 97% cow-related violence reported between 2010 and 2017 has occurred since the BJP government assumed power in May 2014. In 2017 alone, 11 Muslims were killed in incidents of cow vigilantism across the country, the highest toll on record in recent years.³¹ While the number of cow-related lynchings have declined over the

²⁶ For more, see Niranjana Sahoo, “Mounting Majoritarianism and Political Polarisation in India,” in *Political Polarization in South and Southeast Asia*, eds. Thomas Carothers and Andrew O’Donohue (Carnegie Endowment for International Peace, 2020).

²⁷ Shoaib Daniyal, “Congress appeasement has never helped minorities,” *Scroll*, 2014.

²⁸ Ibid

²⁹ Ashutosh Varshney, “2014, like 1952,” *The Indian Express*, 2014.

³⁰ However, the Saffron Party received a major jolt in 2018 when it lost three key Hindi heartland states to the Congress. The BJP’s tally now comes down to sixteen states. See also Suhas Palshikar, “Towards Hegemony: BJP beyond Electoral Dominance,” *Economic & Political Weekly* 53, no. 33 (2018).

³¹ Data have been collected since 2010. See Alison Saldanha, “2017 Deadliest Year for Cow-Related Hate Crime Since 2010, 86% of Those Killed Muslim,” *IndiaSpend*, 2017.

recent years, violence in other spheres (hate crimes) have gone up since 2019.³²

However, intolerance is not restricted to mere discord over the status of cows. Even personal lives and individual liberty are under attack. This is most vividly seen in the spate of legislation brought by the BJP that ruled states must regulate inter-religious marriages in the name of *Love jihad*.³³ Love jihad is used to discourage inter-faith relationships and marriages by claiming that Muslim men are deliberately wooing Hindu women in order to force them to convert to Islam upon marriage. Similarly, the extreme Hindu groups in recent months have raked up the hijab issue by demanding a uniform dress code for Muslim girls in state-run educational institutions.³⁴ In an effort to appease these extremist Hindu groups, Karnataka state recently banned the hijab in educational institutions, thereby depriving thousands of Muslim students of the ability to access education. Ironically, the state High Court ruled in favor of the ban, creating anxiety among minority communities and people fighting to restore their constitutional rights.

The exclusionary tactics adopted by the Hindu right have also recently been deployed in the economic sphere. In response to legitimate protests by Karnataka Muslim traders against the hijab ban, many Hindu groups from the state called for a boycott of Muslim vendors near temple areas.³⁵ This has been echoed by Hindu groups in multiple states ruled by the BJP.³⁶ Given the fact that Muslims overwhelmingly work in informal sectors in small business, street vending, and random low-paid jobs, the economic boycott can become a death blow to their livelihoods. While the vast majority of the Hindu community has not signed on to the boycott, the fringe groups in the community continue to weaponize these tools against the Muslim minority. The latest act targeting Muslims is over disputed religious sites. The Indian Parliament created a law called the Places of Worship Act in 1991 disallowing conversion of a place of worship and mandating that its religious character as it existed on August 15, 1947 be maintained. However, groups of Hindu activists have filed petitions in the courts demanding the restoration of religious places (currently Gyanvapi mosque³⁷ in Benaras, Uttar Pradesh) in their favor. While these cases are being heard by the Supreme Court and lower courts, these acts have revived the memory of Babri mosque and its demolition by a Hindu mob in 1992.³⁸ In short, while India's Muslims were socially and economically marginalized in the past, the recent rise of majoritarianism has translated to exclusion and violence over their right to eat, worship, dress, and engage in business, to name a few.

Towards a Majoritarian State through Constitutional Routes

Beyond exclusionary policies and actions, the Hindu right has been systematically altering the nature and character (secularism) of the state in India. Since the party won a second mandate in 2019, it has

³² "US government report flags attacks on minorities in India took place throughout 2021," *Scroll*, 2022.

³³ Debashis Roy Chowdhury, "Laws against 'Love Jihad' are yet another serious attack on India's once secular Democracy," *Time*, 2020.

³⁴ "Karnataka hijab row: Explained," *The Times of India*, 2022.

³⁵ "Economic boycott of Muslims from Karnataka temple fairs unconstitutional: Lawyers Forum," *The News Minute*, 2022.

³⁶ Vijayta Lalwani, "In A Riot-Torn MP Town, Hindus Organise an Economic Boycott of Muslims," *Article14*, 2022.

³⁷ The Gyanvapi mosque was built on the ruins of the Vishwanath temple, a grand 16th century Hindu temple. The shrine was partially destroyed in 1669 by the sixth Mughal emperor Aurangzeb. Now Hindu groups want to restore the temple, similar to what they did in the Babri Masjid row in the 1990s. See Soutik Biswas, "Gyanvapi masjid: India dispute could become a religious flashpoint," *BBC*.

³⁸ "Babri Masjid: The Timeline of a Demolition," *The Wire*, 2021.

taken a slew of legislative measures that attack the diversity and pluralism of the country. The first major legislative move was the passage of the Triple Talaq Bill (The Muslim Women Protection of Rights on Marriage Bill) in 2019. The bill, which criminalized instant divorce by Muslim men, was one of the core agenda items of the BJP and its sister organizations, Sangh Parivar, for many decades.³⁹

However, the most radical step towards a true majoritarian state came in August when the Hindu right government repealed Article 370 of the constitution, which had granted the only-Muslim majority state Jammu and Kashmir semi-autonomy and certain specific constitutional guarantees.⁴⁰ The state was dismantled into three Union Territories, and the key leaders of the state were put under detention for more than a year. In the same month (August), the BJP-led central government implemented a National Register of Citizens (NRC) in Assam, which required all the residents of the state to furnish physical proof of citizenship. Many analysts suspect the NRC is a tool to deprive Muslim migrants from Bangladesh of citizenship and render them stateless.⁴¹ However, the much bigger constitutional changes towards the majoritarian project came in December 2019 when the central government passed the Citizenship Amendment Act (CAA) which allowed the fast-tracking of citizenship to all Hindus, Buddhists, Sikhs, Parsis, Jains, and Christians facing religious persecution in neighboring countries. Analysts claim that by dividing alleged migrants into Muslims and non-Muslims, the new law openly discriminates against citizens based on their religion.⁴² In short, the CAA and NRC combo have the potential to turn India into a majoritarian state.

The Way Forward

India's democracy, which once evoked praise and worldwide admiration for its preservation of diversity and pluralism, is on the cusp of becoming a majoritarian state. The BJP has become the central pole of Indian politics with a hegemonic presence in every aspect of the republic, particularly the religious and cultural spheres. The politics of religious polarization successfully deployed by the BJP and its affiliates against minorities is keeping India in a permanent state of tension and chaos. India's civic sphere resembles a war zone in which opposing groups, particularly religious minorities, are seen as enemies. This divide is taking a heavy toll on the fragile social relations in the country, which had weathered riots, ethnic skirmishes, and inter-religious conflicts in previous decades. The worse sufferer of this polarization is vulnerable Muslims. Even at the height of the polarization resulting from the Ram Janmabhoomi movement, which caused many deaths and rioting, the divide was never as deep as it is now. While India's strong culture of interfaith dialogue and plural and tolerant Hindu faith may offer some resistance to majoritarianism, these may not endure in the longer run. This is because the Hindu nationalist government and a slew of institutional and legislative changes that it has mounted are steadily altering the secular character of the Indian state. What is aiding the Hindu right's majoritarian project is the divided opposition. Rather than putting up a united front against divisive politics and the daily targeting of minorities by right-wing forces, the opposition parties are now aping the "soft Hindutva" tactics of the BJP. ■

³⁹ Prabhash K. Dutta, "Triple Talaq Bill in Rajya Sabha: Do you know why it is controversial?", *India Today*, 2019.

⁴⁰ Milan Vaishnav, "The BJP in Power: Indian Democracy and Religious Nationalism", *Report*, Carnegie Endowment for International Peace, 2019. https://carnegieendowment.org/files/BJP_In_Power_final.pdf

⁴¹ Pooja Changoiwala, "India's Muslims are terrified of being deported," *Foreign Policy*, 2020.

⁴² "Citizenship Amendment Bill: India's New anti-Muslim law explained," *BBC*, 2019.

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