

Authoritarianism in Indian State, Law, and Society

By *M. Mohsin Alam Bhat*^{*}, *Mayur Suresh*^{**} and *Deepa Das Acevedo*^{***}

Abstract: While India possesses features conventionally associated with liberal democracies, it has lately been understood to suffer from “democratic backsliding”. Commentators have used descriptions like “authoritarianism”, “electoral autocracy”, “ethnic democracy” and “totalitarianism” to understand the current moment in Indian history. The framework of “autocratic legalism” illuminates the dynamics of centralization of power but there are also elements in the Indian experience that complicate this framework and reflect potentially unique features of the country’s democratic decline. These features can be attributed to the political rise and entrenchment of the Hindu nationalist ideology, profoundly facilitated by the electoral dominance of the Hindu right-wing Bharatiya Janata Party and Prime Minister Narendra Modi since 2014. This article argues that India’s spiral towards authoritarianism is also characterized by a range of disturbing and insidious developments beyond the centralization of state power, which are more concerned with majoritarian power seeping into everyday legality. The article considers three examples of such majoritarianism in everyday legality: the use of “anti-terror” laws against minorities and political opponents, policies driving towards the dispossession of minority citizenship, and the mobilization of the mob in ways that blur the lines separating the state from Hindu nationalist actors. These examples demonstrate how in India, autocratic forces are not merely interested in undermining (meaningful) democracy—all in the name of democracy. Instead, autocracy flourishes as a diverse and relatively disaggregated set of actors undermine democracy in the name of an ostensibly truer, Hindu, Indian nationhood.

A. Introduction

^{*} School of Law, Queen Mary University of London, m.bhat@qmul.ac.uk.

^{**} School of Law SOAS, University of London, ms148@soas.ac.uk.

^{***} The University of Alabama School of Law, ddasacevedo@law.ua.edu.

India, we are often reminded, is the world's largest democracy. And indeed, India possesses many of the features most conventionally associated with liberal-democratic polities: it conducts regular elections, has a vibrant judiciary, and enjoys a boisterous public sphere.¹ But none of this has prevented India from experiencing the kind of “democratic backsliding”² seen recently in other parts of the world. Contemporary India has, in fact, been described as “driving...towards authoritarianism,”³ as an “electoral autocracy” and globally a “major autocratizer”⁴, as a “de facto ethnic democracy,”⁵ and—perhaps most troublingly—as a country that is non-linearly but unmistakably “slouching towards a totalitarian future.”⁶ For a country that has previously experienced explicitly autocratic episodes, most notably the Emergency that was declared by Indira Gandhi between 1975 and 1977,⁷ India's movement away from democracy ought to be troublingly familiar and readily contestable.

Yet while elements of India's ongoing political transformation *do* resemble both events in the country's past as well as contemporary events around the globe, we think that India's current spiral towards authoritarianism is also, and importantly, unique. This Article explores those unique dimensions of authoritarianism in the Indian state, law, and society.

¹ *Aziz Huq and Tom Ginsburg*, How to Lose a Constitutional Democracy *UCLA Law Review* 65 (2018), p. 78 (naming “competitive elections; rights of political speech and association; and the administrative and adjudicative rule of law” as three “institutional predicates of democracy”).

² *David Waldner and Ellen Lust*, Unwelcome Change: Coming to Terms with Democratic Backsliding, *Annual Review of Political Science* 21 (2018), pp. 93-113.

³ *Freedom in the World 2021, Democracy under Siege*, <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege> (last accessed on 19 December 2022).

⁴ V-Dem Institute, *Democracy Report 2022: Autocratization Changing Nature?*, https://v-dem.net/media/publications/dr_2022.pdf (last accessed on 19 December 2022).

⁵ *Christophe Jaffrelot*, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy*, Princeton 2021.

⁶ *Arvind Narrain*, *India's Undeclared Emergency: Constitutionalism and the Politics of Resistance*, Westland 2021.

⁷ *Christophe Jaffrelot and Pratinav Anil*, *India's First Dictatorship*, Oxford 2021. It can, and has been argued that the Indian state has exercised and continues to exercise authoritarian power over many of its peripheral territories. For instance, on Jammu and Kashmir, see *Haley Duschinski and Shrimoyee Nandini Ghosh*, Constituting the Occupation: Preventive detention and Permanent Emergency in Kashmir, *The Journal of Legal Pluralism and Unofficial Law* 49 (2017), pp. 314-337.

The Article is part of a years-long global collaborative effort, the Project on Autocratic Legalism (PAL), inspired by the work of Kim Lane Scheppele⁸ and coordinated under the auspices of the Law and Society Association. As the country commentators for one of three original case studies in the PAL venture—Brazil, India, and South Africa—we have participated eagerly in cross-national conversations designed to better understand the anti-democratic developments affecting so many countries today. While there is much to appreciate in the framework of “autocratic legalism,” and much that is applicable to the Indian case, there are also elements in the Indian experience that—as we have previously suggested⁹—complicate or deviate from that framework.

Much of the uniqueness in the Indian case can be attributed to the rise of Hindu nationalism and, specifically, to the election of a Hindu right-wing party—the Bharatiya Janata Party (BJP)—to the federal government in 2014, as well as to several state governments thereafter. Prime Minister Narendra Modi, who has helmed the BJP in 2014, received a more robust mandate in 2019. Consequently, after introducing “autocratic legalism” and situating it within the broader literature on democratic decline, the first part of this Article also provides a brief introduction to Hindu nationalism in India as well as to the BJP’s recent political successes. The rest of the Article connects this discussion of Hindu nationalism to the specificities of the Indian case. The centralization of power and the use of law in the pursuit of power figure importantly in the story of “autocratic legalism,”¹⁰ and both dynamics can also be seen in the Indian context.¹¹ Nevertheless, we suggest that something else is also happening here, and it is driven by the Hindu nationalist flavor of India’s political transformations. That is, if we move beyond the surface of the state, a range of other disturbing—and considerably more insidious—developments become visible, developments that are far more concerned with majoritarian power seeping into everyday

⁸ *Kim Lane Scheppele*, *Autocratic Legalism*, *University of Chicago Law Review* 85 (2018), pp. 545–583.

⁹ *Deepa Das Acevedo*, *Autocratic Legalism in India: A Roundtable*, *Jindal Global Law Review* 13 (2022), pp. 117-140.

¹⁰ *Scheppele*, note 8, p. 547 (“constitutional democracies are being deliberately hijacked by a set of legally clever autocrats, who use constitutionalism and democracy to destroy both”).

¹¹ *Tarunabh Khaitan*, *Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-State Fusion in India*, *Law and Ethics of Human Rights* 14 (2020), pp. 49-95; *Arun K. Thiruvengadam*, *The Intertwining of Liberalism and Illiberalism in India*, in: *András Sajó / Renáta Uitz / Stephen Holmes* (eds.), *Routledge Handbook of Illiberalism*, New York 2021.

legality than with the uses and abuses of formal law. Parts two, three and four of the Article therefore consider three examples of such majoritarianism in everyday legality: the use of “anti-terror” laws against minorities and political opponents, policies driving towards the dispossession of minority citizenship, and the mobilization of the mob in ways that blur the lines separating the state from Hindu nationalist actors. These examples demonstrate how, in India, autocratic forces are not merely interested in undermining (meaningful) democracy in the name of democracy. Instead, autocracy flourishes as a diverse and relatively disaggregated set of actors undermine democracy in the name of an ostensibly truer, Hindu, Indian nationhood.

B. Conceptual Foundations

Democratic decline—the movement of countries away from robust systems of liberal constitutional democracy—has been a dominant concern within comparative law and politics scholarship for some time now. There is considerable variation within the literature on key points—for instance on whether such decline is real¹² (and if so how to measure it¹³), and whether different rates of decline point to fundamentally similar or distinct phenomena.¹⁴ But for many scholars writing in this area, it seems unarguable that the “specter of democratic collapse now haunts a new century” even if some authors are more sanguine about the probable rate and severity of that collapse.¹⁵

In her 2018 presidential address to the Law and Society Association, as well as in subsequent writing, Kim Lane Scheppele has focused on “the particular cases of autocratic legalism within the

¹² Jason Brownlee and Kenny Miao, *Why Democracies Survive*, *Journal of Democracy* 33 (2022), pp. 133–149 with Yascha Mounk, *The Danger is Real*, *Journal of Democracy* 33 (2022), pp. 151–54 (responding to Brownlee and Miao).

¹³ Steven Levitsky and Lucan Way, *The Myth of Democratic Recession*, in: Larry Diamond / Marc F. Plattner (eds.), *Democracy in Decline?*, Baltimore 2015, pp. 58, 59 (cited in Scheppele, note 8, at 547 FN 5)

¹⁴ Tom Daly, *Democratic Decay as the Organizing Concept*, *Democratic-Decay.org*, available at <https://www.democratic-decay.org/democratic-decay-as-the-organising-concept> (last accessed on 19 December 2022) using “democratic decay” “to characterise the phenomenon of democratic degradation over time, as opposed to rapid democratic breakdown through a *coup d’état* or invasion”; see also Aziz Huq and Tom Ginsburg, *How to Lose a Constitutional Democracy*, *UCLA Law Review* 65 (2018), pp. 78–169.

¹⁵ Brownlee and Miao, note 12, p. 133. See also *id.* at p. 135 (“while democracies today are certainly under stress, the prognosis is generally positive”).

general phenomenon of democratic decline.”¹⁶ Scheppele’s emphasis on law was meant to acknowledge the fact that “democracies are not just failing for *cultural* or *economic* or *political* reasons”¹⁷ and that illiberal leaders today are more likely to claim the mantle of liberal democracy as compared to their predecessors, who tended to invoke the framework of “‘peoples’ democracies’ steered by a ‘vanguard party.’”¹⁸ Now, Scheppele underscores, there is a growing sense that liberal constitutional democracies are being “hijacked”¹⁹ by their own laws rather than being openly rejected, undermined, or destroyed. This makes it impossible to “to separate the rules of the game from the game” itself.²⁰

As Scheppele’s discussion suggests, “autocratic legalism” is a path to democratic decline that is particularly attuned to centralized and individually-driven (although eventually also administratively-driven) deployments of formal law. It is, in essence, *lawfare*—“control” through the “coercive use of legal means”—as applied to entire national populations by “native” (rather than colonial) authorities.²¹ This emphasis on centralized, intentional, and individually-driven action through formal legal channels is what makes “autocratic legalism” a useful lens for understanding the Indian context.

During its now eight-year tenure in power at the center, the BJP—or more appropriately, Modi’s BJP, since the party is under the unprecedented and unchallenged control of one political figure—has sought to centralize political power in the executive. Although the party has held the reins of national government before—briefly, in 1998, then again for a full term in 1999—it is during this most recent turn that it has most determinedly gone about the task of remaking the Indian state from within. Modi’s BJP, for instance, altered campaign finance rules to advantage itself,²² exerted

¹⁶ Scheppele, note 8, p. 548.

¹⁷ Scheppele, note 8, p. 547(emphasis added).

¹⁸ Scheppele, note 8, p. 560.

¹⁹ Scheppele, note 8, p. 547.

²⁰ Scheppele, note 8, p. 563.

²¹ John L. Comaroff, A Foreword, *Law & Social Inquiry, Colonialism, Culture, and the Law* 26 (2001), pp.305–314, p. 306.

²² Soutik Biswas, *Electoral Bonds: India's Rocky Road to Transparency in Political Financing*, <https://www.bbc.co.uk/news/world-asia-india-62991256> (last accessed on 19 December 2022).

informal pressures on the judiciary (taking advantage of existing institutional weaknesses),²³ and undermined fourth branch institutions through appointments of sympathizers to key oversight bodies.²⁴ Under the stewardship of Modi's BJP, Indian Parliament's role as an effective forum of democratic accountability has declined more steeply. The government, for instance, has resisted sending bills to parliamentary committees that allow for bipartisan consensus building.²⁵ These efforts have significantly and predictably deepened "institutional rot"²⁶ within various facets of India's democracy. Modi's BJP has also undermined the role of Parliament's upper house that is expected to represent the interests of states, and which the BJP has not managed to electorally dominate yet. For instance, the Speaker of the lower house—appointed by its members, and consequently with disproportionate influence of the ruling party—has classified several consequential bills as financial bills (or "money bills" under India's constitutional parlance) that do not require the support of the upper house.²⁷ This is part of an unmistakable pattern of undermining the role of states—and hence of federalism—as a meaningful constitutional check on executive centralization.²⁸ Modi's government has also relied heavily on ordinances (executive legislation) as a mode of law-making.²⁹ This pattern of behavior, while strictly-speaking legal, has severely weakened the overall democratic character of governance. It has also facilitated

²³ *Manu Sebastian*, *The Supreme Court During Modi Regime*, <https://www.livelaw.in/columns/supreme-court-modi-regime-144200> (last accessed on 19 December 2022).

²⁴ *Subodh Varma*, *How Modi Government Is Destroying Key Indian Institutions*, <https://www.newsclick.in/how-modi-government-destroying-key-indian-institutions> (last accessed on 19 December 2022); *Christophe Jaffrelot*, *Government is Promoting a Culture of Secrecy, Undermining Legislation such as RTI*, <https://indianexpress.com/article/opinion/columns/modi-government-rti-electoral-bonds-election-commission-of-india-monsoon-session-6608151/> (last accessed on 19 December 2022).

²⁵ *Shashi Tharoor*, *Narendra Modi's Potemkin Democracy*, <https://www.newarab.com/opinion/narendra-modis-potemkin-democracy> (last accessed on 19 December 2022).

²⁶ *Jack M. Balkin*, *Constitutional Crisis and Constitutional Rot*, *Md. L. Rev.* 77 (2017). p. 147.

²⁷ *Alok Prasanna Kumar*, *Why the Centre's Dubious Use of Money Bills Must Not Go Unchallenged*, <https://scroll.in/article/807861/why-the-centres-dubious-use-of-money-bills-must-not-go-unchallenged> (accessed on 19 December).

²⁸ *Christophe Jaffrelot and Sanskruti Kalyankar*, *Indian Federalism Under Modi, from Theory to Practice*, <https://www.institutmontaigne.org/ressources/pdfs/blog/indian-federalism-under-modi-theory-practice-policy-brief.pdf> (last accessed on 19 December).

²⁹ *The Wire*, *Modi Govt, With 76 Ordinances in 7 Years, Surpasses UPA's 10-Year Record of 61*, <https://thewire.in/government/modi-govt-with-76-ordinances-in-7-years-surpasses-upas-10-year-record-of-61> (last accessed on 19 December 2022).

centralization, weakened democratic accountability and, consequently, secured Modi's position in power. Modi's BJP has also increasingly weaponized anti-terror laws and financial regulations to target opposition parties and unsympathetic civil society actors.³⁰ These developments clearly fit with "autocratic legalism": they reveal how Modi's BJP has relied on its electoral mandate to dismantle liberal democratic mechanisms through legal routes.

But even as "autocratic legalism" productively emphasizes centralized, intentional, and individually-driven action through formal legal channels, the concept simultaneously reveals potentially unique characteristics of the Indian case. This has much to do with the dynamics and contours of Hindu nationalism.

Scholarly literature on Hindu nationalism is vast, examining everything from its historical antecedents,³¹ to the way it intersects with gender and caste in contemporary India,³² to its often transformative (but nonetheless impactful) journeys into the diaspora.³³ For our purposes, three relatively uncontroversial insights emerging from this literature are particularly important.

The first is the ideological character of Hindu nationalism generally, and more specifically Hindutva. Hindutva is perhaps best understood as an extreme form of Hindu nationalism that is committed to Hindu dominance and supremacy.³⁴ Hindutva ideologues have called for the expulsion of Muslims and Christians from India—or, at a minimum, for Muslims and Christians to acknowledge the essentially Hindu character of India and Indianness.³⁵ For theoreticians of

³⁰ *Steve Coll*, In India, Narendra Modi's Government Is Using the Courts to Attack Civil Rights, <https://www.newyorker.com/news/daily-comment/in-india-narendra-modis-government-is-using-the-courts-to-attack-civil-rights> (last accessed on 19 December).

³¹ *Christophe Jaffrelot*, *Hindu Nationalism: A Reader*, Princeton 2007.

³² *Tarini Bedi*, *The Dashing Ladies of Shiv Sena: Political Matronage in Urbanizing India*, New York 2016.

³³ *Arvind Rajagopal*, Hindu Nationalism in the US: Changing Configurations of Political Practice, *Ethnic and Racial Studies* 23 (2000), pp. 467–496.

³⁴ *Chetan Bhatt*, *Hindu Nationalism: Origins, Ideologies and Modern Myths*, New York 2020, p. 77; *Balmurli Natrajan*, Racialization and Ethnicization: Hindutva Hegemony and Caste, *Ethnic and Racial Studies* 45 (2022), pp. 298–318; *Deepa Reddy*, Capturing Hindutva: Rhetorics and Strategies, *Religion Compass* 5 (2011), pp. 427–438.

³⁵ The second chief of the Rashtriya Swayamsevak Sangh famously wrote that, there were "only two courses open to the foreign elements"—primarily Muslims and Christians—"either to merge themselves in the national race and adopt its culture, or to live at its mercy so long as the national race may allow them

Hindutva, themes like “Muslims as aggressors, the need for revenge, preserving Hindu dharma and securing national honor” remained lifelong constants that eventually translated into “the utterances of the BJP”, other organizations associated with the ideology, and prominent Hindutva figures like Narendra Modi.³⁶ Second, the BJP’s rise and continued dominance is in large part attributable not to itself but to the “Sangh Parivar” (*lit.* “Sangh family”), the network of right-wing Hindu activists and organizations led by the Rashtriya Swayamsevak Sangh (RSS).³⁷ The BJP is the political face of the RSS and the Sangh Parivar. Modi himself started his public life as a cadre member of the RSS and retains both the organization’s membership and ideological attachment. And third, the BJP’s Hindutva orientation has always veered towards centralizing power in the executive.³⁸ Collectively, these three points convey India’s adherence to and deviation from the “autocratic legalist” model of democratic decline.

The awareness of this constitutive background of Hindutva shows, first, that the purpose of Modi’s BJP cannot be simply understood as politically entrenching an autocratic leader. The purpose is more profoundly ideological. Hindutva ideologues of the RSS and the allied Sangh Parivar organizations have long called for a formal recognition of India as a “Hindu rashtra” (*lit.* Hindu nation).³⁹ The unspecificity of what a Hindu rashtra entails is perhaps beside the point. This aspiration itself has produced tremendous impulse to constantly enact majoritarian legislation (like anti-conversion and cow protection laws we discuss below) and privilege hyper-nationalism at the cost of human rights and minorities (like terrorism legislation and citizenship policies we discuss

to do so and to quit the country at the sweet will of the national race.” See *M.S. Golwalkar, We, or Our Nationhood Defined* 104, Nagpur 1939, <https://sanjeev.sabhllokcycity.com/Misc/We-or-Our-Nationhood-Defined-Shri-M-S-Golwalkar.pdf>. (last accessed on December 2022).

³⁶ *Jyotirmaya Sharma*, *Hindutva: Exploring the Idea of Hindu Nationalism*, New Delhi 2011, pp. 127–128.

³⁷ *John Harriss*, *Hindu Nationalism in Action: The Bharatiya Janata Party and Indian Politics*, *South Asia: Journal of South Asian Studies* 38 (2015), pp. 712-718.

³⁸ *Nikita Sud*, *The Actual Gujarat Model: Authoritarianism, Capitalism, Hindu Nationalism and Populism in the Time of Modi*, *Journal of Contemporary Asia* 52 (2022), pp. 102-126.

³⁹ *Ashutosh Varshney*, *How India's Ruling Party Erodes Democracy*, *Journal of Democracy* 33 (2022), pp. 104-118.

below). This pattern has convinced many observers that India is steadily moving towards a fundamental political transformation: from a secular republic to an ethnocracy.⁴⁰

Second, the political impulses under Modi's BJP are not only to centralize power (although doubtlessly such impulses exist in good measure): there is also, simultaneously, an impulse to empower non-state Hindutva actors. The most significant non-state actor, of course, is the RSS itself, which today exercises unprecedented power and influence in Indian society and state. Thomas Hansen and Srirupa Roy recently note that there continues to be a widespread diffusion of Hindutva and RSS ideology across India's institutions,⁴¹ which is slowly yet steadily entrenching the ideology deep within the crevices of the country's society and state. Christophe Jaffrelot has warned of the creeping formation of a "deep state" in India,⁴² where the electoral success of Modi's BJP is pushing India towards a new regime altogether.⁴³ And while much of this is occurring through the instrumentalities of formal legality, one of us has expressed concerns that state-driven extra-legality is equally constitutive of these political transformations.⁴⁴

Finally, the BJP, the RSS and other affiliates of the Sangh Parivar have pursued the transformation of Indian society into a Hindu nation. RSS ideologues have long affirmed Hindu society as the core and historically unbroken source of Indian political sovereignty.⁴⁵ For much of the twentieth century, the RSS focused its efforts on social transformation through various strategies of

⁴⁰ *Indrajit Roy*, India: The Hollowing Out of the World's Largest Democracy, *Political Insight* 13 (2022), pp. 26-31; *Christophe Jaffrelot*, India's Democracy at 70: Toward a Hindu State?, *Journal of Democracy* 28 (2017), pp. 52-63.

⁴¹ *Thomas Blom Hansen and Srirupa Roy*, What is New About 'New Hindutva'?, in: Blom Hansen / Roy (eds.), *Saffron Republic: Hindu Nationalism and State Power in India*, Cambridge 2022), p. 1.

⁴² *Edward Anderson and Christophe Jaffrelot*, Hindu Nationalism and the 'Saffronisation of the Public Sphere': An Interview with Christophe Jaffrelot, *Contemporary South Asia* 26 (2018), pp. 468-482.

⁴³ *Christophe Jaffrelot and Gilles Verniers*, A New Party System or a New Political System?, *Contemporary South Asia* 28 (2020), pp. 141-154.

⁴⁴ *M. Mohsin Alam Bhat*, 'The Irregular' and the Unmaking of Minority Citizenship: The Rules of Law in Majoritarian India, *Queen Mary Law Research Paper* 395 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4274814 (last accessed on 19 December 2022).

⁴⁵ A key text for this is *Deendayal Upadhyay's* "Integral Humanism", <http://avap.org.in/Uploads/Publication/Integral%20Humanism3.pdf> (last accessed on 19 December 2022).

pedagogy, violence and symbolic action.⁴⁶ However, with the electoral success of the BJP under Narendra Modi, the state has become another instrument in the RSS' repertoire.⁴⁷ This makes the current moment in India particularly dangerous because it involves the complete confluence of Hindu society, nation and the state. "The project of Hindutva", as Partha Chatterjee recently notes, is "a hegemonic struggle to achieve a convergence between the nation-state...and a people-nation that is unitary, homogeneous, and transcends the various regions within India."⁴⁸ The state and the law are *among* the important channels for achieving this hegemony.

This indicates two simultaneous political moves being undertaken in India, one paradigmatic to autocratization processes like Scheppele's "autocratic legalism", and the second related but distinct. Modi's BJP has enacted policies that centralize power. But it has also used local state institutions (such as lower courts, local police and lower bureaucracies) and privileged and empowered non-state entities, not least of all the RSS, in India's institutions. This has involved dispersal of Hindutva across Indian institutions leading not only to its normalization but increasing entrenchment.

Similarly, Modi's centralizing practices seek to depoliticize the public sphere by eroding the capacity of democratic process and discourse in shaping public policy. This reflects the concerns that autocracy scholars like Scheppele have with autocrats: the state dominates society in the name of popular authorization, making democratic change in government an uphill if not an impossible task. But Modi's BJP has done something ostensibly different too. It has constantly politicized Indian society by aggravating social identities. This politicization allows the BJP to polarize the electorate—increasingly in permanent ways—to win elections. Permanent polarization legitimizes, normalizes, and eventually entrenches Hindutva violence against minorities and other democratic actors speaking on behalf of civic rights and inclusion. This polarization we surmise

⁴⁶ *Peter van der Veer*, Riots and Rituals: The Construction of Violence and Public Ppace in Hindu Nationalism, in: Paul R. Brass, Riots and pogroms, London 1996, pp. 154-176.

⁴⁷ *Pratap Bhanu Mehta*, Hindu Nationalism: From Ethnic Identity to Authoritarian Repression, Studies in Indian Politics 10 (2022), pp. 31-47.

⁴⁸ *Partha Chatterjee*, I am the People: Reflections on Popular Sovereignty Today, New York 2019, p. 108.

shows that there are features not only of authoritarianism, and importantly, also of totalitarianism in Modi's Hindutva politics.⁴⁹

As this brief overview suggests, India's movement towards authoritarianism both reflects and resists the centralized, intentional, and legally driven "hijacking" of democracy characteristic of autocratic legalism. The BJP's efforts to consolidate power not via direct means but by changing the parameters within which democratic governance must take place are the kind of "rule-changing" that is exemplary of autocratic legalism. At the same time, the BJP's position within the broader Sangh Parivar, and the shift in RSS strategy towards political (rather than merely social) transformations within India, mean that the decline of Indian democracy is decentralized, not solely—or even primarily—effectuated through law, and beyond the intentions of any individual or group. In the rest of this Article, we explore three examples of Hindutva-Hindu majoritarianism's growing influence on everyday life and show how that influence is informed, though not necessarily driven, by formal law.

C. Anti-Terror Laws

India has had three national legislations that deal with terrorism. These are the Terrorist and Disruptive Activities (Prevention) Acts (TADA) (lapsed in 1985), the Prevention of Terrorism Act, 2002 (POTA) (repealed 2004) and the currently extant Unlawful Activities Prevention Act, 1967 (UAPA) (provisions relating to terrorism added in 2004). While these laws formally criminalize acts of "terror," the breadth of their definitions means that the statutes also criminalize speech, possessing literature, mere membership of banned organizations and other acts that do not involve violence. And yet, what is *most* egregious about these anti-terror laws is how they deviate from the generally applicable procedural and evidentiary laws.

For example, the current anti-terror law—UAPA—permits an extended period of custodial detention: up to thirty days, instead of the fifteen days allowed for ordinary crimes. UAPA also

⁴⁹ For this distinction, see *Jonathan Leader Maynard, Authoritarian and Totalitarian Ideologies*, in: Jonathan Leader Maynard / Mark L. Haas (eds.), *The Routledge Handbook of Ideology and International Relations*, New York 2022, pp. 54, 66

authorizes an extended period of pre-charge detention (up to 180 days, instead of ninety days for ordinary crimes), and adopts special rules that make it virtually impossible to be granted bail pending trial. Matters do not improve at the point of trial because, among other features, UAPA permits the concealment of witness identity from the defense and deviates from generally applicable procedures in ways that serve to prolong litigation. A person accused of offenses under UAPA can spend years in jail waiting for their trials to conclude even though the overwhelming majority of accused individuals are discharged or acquitted.

For human rights activists in India, these anti-terror laws—and the special rules of evidence and procedure within them—represent an “undeclared emergency.”⁵⁰ The statutes effectively criminalize fundamental rights by granting immense powers to the police and the executive, and allow the police to engage in torture, arbitrary detention, kidnapping, and extortion under the cover of legality.⁵¹ Anti-terror laws are not, in other words, aimed at securing a conviction. Rather, the technical features of anti-terror laws (especially those related to bail) convey that the statutes are intended to keep people in jail for as long as possible.⁵² Human rights activists argue these laws are fundamentally anti-democratic and an assault upon the separation of powers and constitutionally enshrined fundamental rights.⁵³

⁵⁰ *Mohammed Afeef and Aiman Khan*, *The Undeclared Emergency: Draconian Laws and Political Prisoners*, <https://gaurilankeshnews.com/the-undeclared-emergency-draconian-laws-and-political-prisoners/> (last accessed on 19 December 2022).

⁵¹ Human Rights Watch, *The “Anti-Nationals:” Arbitrary Detention and Torture of Terrorism Suspects in India* <https://www.hrw.org/sites/default/files/reports/india0211W.pdf> (last accessed on 19 December 2022).

⁵² *Gautam Navlakha*, *POTA: Freedom to Terrorise*, *Economic and Political Weekly* 38 (2003), pp. 3038-3040; *Jayanth K. Krishnan*, *India’s Patriot Act: POTA and the Impact on Civil Liberties in the World’s Largest Democracy*, *Law and Inequality* 22 (2004), pp. 265–300; *Anil Kalhan, Gerald Conroy, Mamta Kaushal, Sam Miller, and Jed Rakoff*, *Colonial Continuities: Human Rights, Terrorism and Security Laws in India*, *Columbia Journal of Asian Law* 20 (2006), pp. 93–234.

⁵³ *Ujjwal Kumar Singh*, *The Silent Erosion: Anti-Terror Laws and Shifting Contours of Jurisprudence in India*, *Diogenes* 53 (2006), pp.116–33; *Ujjwal Kumar Singh*, *State, Democracy and Anti-Terror Laws in India*, New Delhi 2007; *Coordination of Democratic Rights Organisations*, *The Terror of Law: UAPA and the Myth of National Security*, 2012; *Krishnan*, note 52, p 266 (calling POTA a “so-called security-focused, terrorist-prevention statute”).

For these reasons, anti-terror laws have always been characterized as undemocratic,⁵⁴ but they have become especially troubling—more expansive in scope and frequent in use—following the BJP’s ascension to power at the center. In 2019, the government passed an amendment to the UAPA which empowered the federal government to designate individuals as terrorists *even if they had not been convicted of a crime*. In 2020, a journalist from Kerala, Siddique Kappan, was arrested under the UAPA while attempting to report on the gang rape of a Dalit woman in the BJP-ruled state of Uttar Pradesh.⁵⁵

Perhaps no single example is more illustrative of the acceleration and intensification of the concerns raised by anti-terror laws than the prosecutions linked to the 2018 Bhima Koregaon protests. On 1 January 2018, thousands of mostly Dalit people gathered to celebrate the 200th anniversary of the Battle of Koregaon, an event that sealed the triumph of the British colonial army (staffed by Dalits) over the armies of the Maratha Empire. Over time, the significance of the Battle has shifted from symbolizing imperial dominance over the subcontinent to being associated with Dalit victory over upper caste Hindus. The 200th commemoration, called the Elgar Parishad, was organized through a collaboration by approximately 250 civil society organizations. According to the organizers, the event’s theme was to “save the constitution” from right wing Hindutva forces who “neither believe in democracy nor socialism nor secularism.”⁵⁶ Unsurprisingly, the event attracted Hindu nationalist attention. Individuals on their way to attend the memorialization were attacked by members of two Hindu nationalist groups, and the ensuing violence led to the death of one person and injury to several others.

⁵⁴ People’s Union for Civil Liberties, *Black Laws*, Delhi 1985.

⁵⁵ According to reportage of the case against Kappan, the police found that Kappan was in possession of publicly accessible literature about a banned terrorist organisation—the Students Islamic Movement of India—which indicated his membership of this organisation see *Akanksha Kumar*, *The Booklet Connection: UP Police says PUDR*, JNU Publications link Siddique Kappan to SIMI <https://www.newslaundry.com/2021/11/02/the-booklet-connection-up-police-says-pudr-jnu-publications-link-siddique-kappan-to-simi> (last accessed on 19 December 2022).

⁵⁶ *Arefa Johari*, ‘They Want Fascist Forces to Reign’: Retired Judges who Organised Pune’s Elgaar Parishad Speak Out’ <https://scroll.in/article/892631/they-want-fascist-forces-to-reign-retired-judges-who-organised-elgar-parishad-speak-out> (last accessed on 19 December).

However, instead of investigating the Hindu nationalist mobs who initiated the attack, the police investigated the Elgar Parishad organizers and accused them of being a front for a banned Maoist (left extremist) organization. The police then used this initial complaint to arrest and charge an ever-widening group of people, including human rights lawyers from around the country, many of whom remain in jail pending trial for offenses under the UAPA. Publicly, the police declared that these wide-net investigations unearthed several threats to national security—including a plot to assassinate Prime Minister Modi—even though these allegations have not been formally made, much less substantiated, in any court of law. But thanks to the procedural peculiarities of India’s terrorism laws, such allegations were sufficient to justify arrests and ensure that the accused spend years in jail pending the production and evaluation of evidence at trial.

Anti-terror laws have also been used quite openly to advance the government’s Hindu nationalist agenda. In early 2020, widespread demonstrations took place across the country in protest against the Citizenship Amendment Act (CAA). The Act, which is discussed in more detail below, openly discriminates against Muslims by permitting a fast-tracked process of naturalization for immigrants from Pakistan, Bangladesh and Afghanistan if they are Hindu, Sikh, Christian, Zoroastrian, Jain, or Buddhist—essentially, if they belong to *any* other faith community. Protests against the CAA most often took the form of sit-ins within public spaces, including traffic junctions.

In February 2020, a local party functionary of the BJP spoke at a pro-CAA rally where he “gave a three-day ultimatum to the Delhi Police to clear roads in northeast Delhi.”⁵⁷ Otherwise, he warned, the BJP functionaries would take matters into their own hands. When riots did indeed erupt in Delhi, lasting for three days and killing over fifty people, most of the deaths were of Muslim individuals, and most of the property that was destroyed belonged to Muslims, including four mosques.⁵⁸ The Delhi Police investigated these events as terrorist actions rather than as a riot,

⁵⁷ Delhi News, Kapil Mishra Warns Cops: Clear Road in 3 Days... After that We Won’t Listen to You <https://www.hindustantimes.com/cities/kapil-mishra-warns-cops-clear-road-in-3-days-after-that-we-won-t-listen-to-you/story-Ppd9qPXknizVMsaLsFIFTI.html> (last accessed on 19 December).

⁵⁸ The Wire, Ground Report: As Amit Shah Praises Delhi Police, Riot Victims Tell a Different Story, <https://thewire.in/communalism/delhi-riots-amit-shah-muslims-delhi-police> (last accessed on 19 December 2022); New York Times, Indian Police Sweep Through Riot Zone, Making More Arrests

arguing that “terrorism is an act done with a view to disturb the even tempo of society, [and] create a sense of fear in mind of a section of society”:

Intentional blocking of roads to cause inconvenience and disruption of the essential services to the life of community residing in North-East Delhi, creating thereby panic and an alarming sense of insecurity. The attack on police personnel by women protesters in front only followed by other ordinary people and engulfing the area into a riot is the epitome of such pre-mediated plan and as such the same would prima facie be covered by the definition of ‘terrorist act’.⁵⁹

Accordingly, the Delhi Police arrested several student union leaders who were part of the protests, arguing that the protests constituted a “pre-planned conspiracy.”⁶⁰ In this way, the UAPA was used to represent democratic activity as terrorist action, to specifically delegitimize democratic activity when it is undertaken by minoritized (Muslim and Dalit) voices, and to keep both the leaders and ordinary members of associated movements in detention for years.

D. Citizenship Dispossession and Reshaping the Body Politic

Another paradigmatic example of authoritarian politics in India is the Modi government’s aggressive “ethnicization” of Indian citizenship.⁶¹ BJP-led Parliament passed the Citizenship Amendment Act (CAA) in 2019 that was unprecedented in making religious identity a qualification for Indian citizenship. The legislation exempted certain non-Muslim immigrants from Pakistan, Bangladesh and Afghanistan from being treated as “illegal migrants” and offered them a faster route to citizenship naturalization. Since 2014, Indian government has started adopting this sectarian distinction to give long-term visas to non-Muslim immigrants from

<https://www.nytimes.com/2020/02/28/world/asia/india-new-delhi-violence.html> (last accessed on 19 December).

⁵⁹ Bail Order in *State v Tahir Hussain*, I.A. No. 922021 (Umar Khalid), Additional Sessions Judge 3 (Shahdara), Karkardooma Court, Delhi, order dated 24.03.2022, https://www.livelaw.in/pdf_upload/bail-application-umar-khalid-finally-signed-59-20-413009.pdf (last accessed on 19 December 2022).

⁶⁰ The Print, *Were 2020 CAA-NRC Protests & Riots a ‘Terrorist Act’? Depends on which Delhi HC Bench You Ask*, <https://theprint.in/judiciary/were-2020-caa-nrc-protests-riots-a-terrorist-act-depends-on-which-delhi-hc-bench-you-ask/1174312/> (last accessed on 19 December 2022).

⁶¹ For a discussion of the notion of ethnicization, see *Christian Joppke*, *Transformation of Citizenship: Status, Rights, Identity*, *Citizenship Studies* 11 (2007), pp. 37-48.

Pakistan and Afghanistan.⁶² The cumulative effect after CAA was that only Muslim immigrants were likely to be treated as ‘illegal migrants’.⁶³ Modi’s government has simultaneously announced the implementation of an ambitious citizens registration process—the National Register of Citizens or the NRC—that will compile the list of all Indian citizens based on documentary evidence.⁶⁴ A version of the NRC was implemented in the eastern state of Assam, which in August 2019 left out 2 million residents who the government claimed could not provide adequate evidence of their Indian citizenship. These persons now face the possibility of statelessness, arguably the largest exercise in state manufactured statelessness since World War II.⁶⁵

These citizenship policies seek to fundamentally transform the Indian state from a secular republic into a majoritarian “ethnic” state.⁶⁶ While the CAA formally affects non-citizen Muslim immigrants, its sectarian classifications, as Farrah Ahmad notes, symbolize which citizens belong—as the core of the Indian nation—and who are the outsiders.⁶⁷ This religious distinction among Indians as the basis of national belonging has a long historical genealogy in India,⁶⁸ with the core Hindu nationalist precept that Hindus have a stronger—even, natural—claim over India. Documentary citizenship processes like the NRC also emerge from deeply held Hindu majoritarian anxieties, especially the paranoia over Muslim demography in India. For instance, the BJP and allied Hindutva actors have historically supported the NRC in the state of Assam

⁶² *M. Mohsin Alam Bhat and Aashish Yadav, On the Verge: Revocation and Denial of Citizenship in India*, in: *Émilien Fargues / Iseult Honohan* (eds.), *Revocation of Citizenship: The New Policies of Conditional Membership*, Robert Schuman Centre for Advanced Studies Global Governance Programme 2021.

⁶³ *M. Mohsin Alam Bhat, The Constitutional Case Against the Citizenship Amendment Bill*, *Economic and Political Weekly* 54 (2019), p. 7.

⁶⁴ See *Bhat and Yadav*, note 62.

⁶⁵ *Michelle Foster and Jade Roberts, Manufacturing Foreigners: The Law and Politics of Transforming Citizens into Migrants*, in: *Catherine Dauvergne* (ed.), *Research Handbook on the Law and Politics of Migration*, Cheltenham 2021.

⁶⁶ *Madhav Khosla and Milan Vaishnav, The Three Faces of the Indian State*, *Journal of Democracy* 32 (2021), pp. 111-125.

⁶⁷ *Farrah Ahmed, Arbitrariness, Subordination and Unequal Citizenship*, *Indian Law Review* 4 (2020), pp. 121-137.

⁶⁸ *Niraja Gopal Jayal, Citizenship and Its Discontents: An Indian History*, London 2013.

based on the view that there has been an unbridled inflow of Bangladeshi Muslim immigrants.⁶⁹ This assertion has remained unsubstantiated. But this has not halted heightening political violence against Bengali-speaking Muslims in Assam and demands for disproportionate procedures to identify and deport immigrants. The manufacture of mass disenfranchisement and statelessness has historically been associated with authoritarian and totalitarian regimes. What is significant in the case of the CAA and the NRC is how India, and arguably other countries,⁷⁰ have used the instrumentalities of formal legality—and claims of being democratically legitimate—to dispossess millions of their citizenship.

For Modi's BJP and other Hindutva actors, practices of citizenship dispossession have another political appeal. Such practices offer insidious routes to reshape India's body politic that can be instrumentalized to achieve socio-political hegemony and entrench into political power. Modi's Home Minister, his second in command, has presented the CAA and the NRC as two limbs of the same citizenship reform. He announced that an all-India NRC would identify all unauthorized immigrants and the CAA would subsequently protect Hindus.⁷¹ Thus, the combined (and expected) effect of these citizenship policies would be to render minority Muslim citizens precarious—to make their status uncertain if not potentially disenfranchise them—while securing a dominant and consolidated Hindu electorate. These citizenship policies also provide an opportunity to the BJP and other Hindutva actors to entrench sectarian divisions. Arbitrary documentary citizenship policies like the NRC, which make intrusive and highly consequential demands on people, make religious identity salient to the lives of ordinary Hindus and Muslims alike. These arguably banal bureaucratic processes seek to politicize sectarian identity in everyday lives, and simultaneously normalizing the subordination of minority citizens. There is the political use of these policies – constant sectarian polarization is the fertile ground of the

⁶⁹ *M. Mohsin Alam Bhat*, *Doubtful Citizens: Irregularization and Precarious Citizenship in Contemporary India*, in: Michelle Foster / Jaclyn Neo / Christoph Sperfeldt (eds.), *Statelessness in Asia* (Forthcoming 2024).

⁷⁰ *Neha Jain*, *Manufacturing Statelessness*, *American Journal of International Law* 116 (2022), pp. 237-288.

⁷¹ *Pia Krishnankutty*, *Mitron, Aap Chronology Samajhiye — This is How Amit Shah's Line has Gone Viral*, <https://theprint.in/politics/mitron-aap-chronology-samajhiye-this-is-how-amit-shahs-line-has-gone-viral/379823/> (last accessed on 19 December 2022).

BJP's guaranteed electoral success. Beyond electoral success, such policies facilitate the capture of civil society—to develop an ideological hegemony—that can entrench not just the leaders but also regimes in the long run.

Along with these long-term harms to the democratic well-being of India, these citizenship policies have been closely associated with centralizing patterns in governance. These policies show that the executive could strip millions of their citizenship through arbitrary and abusive administrative procedures, without ever changing the substance of Indian citizenship legislation. The CAA and the NRC also reflect worrying patterns of institutional subversion. Formally, it was Chief Justice Gogoi of the Supreme Court who initiated Assam's NRC through a series of executive orders from 2013 to 2019. Justice Gogoi's actions came under tremendous criticism, both being arbitrary and not judicious, and leading to large scale citizenship dispossession.⁷² When he retired in 2019, the government nominated him to Parliament's upper house. For many critics, this indicated that Justice Gogoi's actions—in the NRC case and other politically sensitive cases—could have been at the behest of the government.⁷³ Equally disconcerting was the signaling effect of Justice Gogoi's parliamentary nomination. Modi evidently wanted to indicate to serving justices that sympathetic and pliant judges will be awarded after retirement. More than 200 petitions constitutionally challenged the CAA in the Supreme Court. But despite the passage of three years and three chief justices, the Supreme Court did not constitute a bench to decide the controversy. This reflects a broader pattern of the judiciary evading politically sensitive matters through delays.

E. The Mob and the State

Modi's BJP has also increasingly exerted unprecedented control over Indian social life. It has expanded legislation governing religious faith choice, intimacy, and food, which inevitably seek to discipline women and target religious and caste minorities. These policies endorse and enforce majoritarian norms at the cost of individual freedom and minority rights. They equally reflect a

⁷² *Gautam Bhatia*, Justice Must be Open, Not Opaque, <https://www.hindustantimes.com/analysis/justice-must-be-open-not-opaque/story-uOIfNMAKfX0sijzmkAETnM.html> (last accessed on 19 December 2022).

⁷³ *Gautam Bhatia*, The Troubling Legacy of Chief Justice Ranjan Gogoi, <https://thewire.in/law/chief-justice-ranjan-gogoi-legacy> (last accessed on 19 December).

disconcerting pattern of the state (through institutions and the instrumentality of formal legality) working in concert with non-state Hindutva actors.

We take two examples of this phenomenon. The first is the recent expansion of laws restricting religious conversions in the context of interfaith relationships. These laws—popularly known as “love jihad” laws—are based on the conspiracy theory that Muslim men are engaged in concerted efforts of seducing Hindu women to eventually convert them to Islam. Such conspiracy theories have historically been common among Hindu nationalist networks,⁷⁴ arising from profound anxieties around freedom of Hindu women to choose their partners and demographic anxieties towards the Muslim minority. Pushed by organizations belonging to the Sangh Parivar, rumors of Muslim men abducting, seducing, converting and marrying Hindu women have circulated in different parts of India. These have created anxieties around preserving the ‘purity’ of Hindu women around demographic replacement (that is, the canard that Muslim population will soon grow bigger than the Hindu population).⁷⁵ Previously such anxieties resulted in sectarian and mob violence,⁷⁶ but since 2020 several BJP-led states have started resorting to formal legality. “Love jihad” laws—adding to an already large number of anti-conversion laws in various Indian states⁷⁷—have criminalized religious conversions on the ground of marriage.

The second example is the recent expansion of criminalization of trade and slaughter of cattle. Historically, rumors of cow slaughter—much like Hindu-Muslim relationships—have often resulted in anti-Muslim and anti-Dalit violence, and the issue has remained one of the most significant cultural fault lines in Indian society, intersecting with both caste and religious subordination.⁷⁸ Laws prohibiting slaughter of cows—considered sacred by many Hindus—have

⁷⁴ *Charu Gupta*, *Hindu Women, Muslim Men: Love Jihad and Conversions*, *Economic and Political Weekly* (2009), pp. 13-15.

⁷⁵ *Mohan Rao*, *Love Jihad and Demographic Fears*, *Indian Journal of Gender Studies* 18 (2011), pp. 425-430; *Kenneth Bo Nielsen and Alf Gunvald Nilsen*, *Love Jihad and the Governance of Gender and Intimacy in Hindu Nationalist Statecraft*, *Religions* 12 (2021), p. 1068.

⁷⁶ *David James Strohl*, *Love Jihad in India’s Moral Imaginaries: Religion, Kinship, and Citizenship in Late Liberalism*, *Contemporary South Asia* 27 (2019), pp. 27-39.

⁷⁷ *Laura Dudley Jenkins*, *Religious Freedom and Mass Conversion in India*, Philadelphia 2019.

⁷⁸ *Shabnum Tejani*, *Cow Protection, Hindu Identity and the Politics of Hurt in India, c. 1890–2019*, *Emotions: History, Culture, Society* 3 (2019), pp. 136-157.

been common since the early 1950s.⁷⁹ While other governments have also legislated cow protection, BJP-led states since the 2015 have consistently both expanded and politicized these laws. Under the leadership of the BJP, some states have legislated imprisonment up to ten years for slaughtering cattle, and fines for sale, transport, or possession of beef,⁸⁰ not only making these laws penally disproportionate but also directly and explicitly controlling dietary practices. Since 2015, there has been a perceptible rise in vigilante violence by Hindutva-affiliated *Gau Raksha Dals* (*lit.* Cow Protection Units), with countless instances of religious and caste hate crimes against Muslim and Dalits on grounds of alleged cow slaughter.⁸¹

While courts have either upheld such laws or are yet to decide their legality, critics have consistently argued that these laws fail India's constitutional tests. "Love jihad" laws, like and arguably more than other anti-conversion laws,⁸² undermine religious liberty and privacy by procedurally encumbering meaningful choice of partners and religious faith.⁸³ These laws also raise serious procedural problems. Vague phraseology of offenses under these laws encourages arbitrary and abusive state behavior. For instance, anti-conversion laws prohibit conversions based on "allurement" including "any temptation" of a "better lifestyle", or "coercion" that includes "psychological pressure", or "undue influence" that includes "unconscientious use" of "influence". Such indeterminate and overbroad terms make practically any act of religious conversion a criminal offense. These laws consequently create a chilling effect on effective religious choice, just as they expose ordinary citizens to state's penal action. "Love jihad" laws, and at least some cow protection laws, explicitly endorse, and enforce majoritarian religious morality, and hence violate Indian Constitution's secular values. Doubtlessly, for their partisans,

⁷⁹ Radha Sarkar and Amar Sarkar, Sacred Slaughter: An Analysis of Historical, Communal, and Constitutional aspects of Beef Bans in India, *Politics, Religion & Ideology* 17 (2016), pp. 329-351.

⁸⁰ Human Rights Watch, Violent Cow Protection in India: Vigilante Groups Attack Minorities 2019, <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities> (last accessed on 19 December 2022).

⁸¹ Human Rights Watch, note 80.

⁸² M. Mohsin Alam Bhat, Religious Freedom in Contest: Enforcing Religion Through Anti-Conversion Laws in India, *Journal of law, religion and state* 9 (2021), pp. 178-211.

⁸³ Sumit Sonkar, Policing Interfaith Marriages: Constitutional Infidelity of the Love Jihad Ordinance, *Journal of Law and Religion* 37 (2022), pp. 432-445.

their majoritarian character is precisely what makes them so appealing: they reflect a creeping legal incorporation of an ethnic state.

Beyond legal abuse, the actual operation of these laws reflects further insidious practices. These laws have disturbingly encouraged extralegal violence against minorities. Yash Sharma and Laura Jenkins recently note that these laws incorporate “vigilante loopholes” that provide legally viable spaces for vigilante mob groups to target and harass minorities.⁸⁴ For instance, some “love jihad” laws permit “any aggrieved person” to file police complaints against inter-faith couples. This has meant that anyone—parents, neighbors, and more often than not, Hindutva mob groups—have filed criminal complaints against couples, harassed and threatened them, and sometimes physically assaulted them.⁸⁵ Similarly, some BJP-led states have sought to provide legal protection to right wing *Gau Raksha* or cow protection groups, in some instances to even supply them with legal identification cards to assist the police in identifying persons violating the law.⁸⁶ Thus, by making these laws, BJP governments have not only symbolically legitimized anti-minority violence, but also constituted extralegal violence and incorporated vigilantism under the law. As Jenkins and Sharma note, the “incorporation of elements of the love jihad conspiracy theory, broad swath of potential accused and potential accusers, vigilante loopholes, and denial of agency to certain types of converts all undermine democratic personhood and freedoms to convert and/or marry.”⁸⁷

There is also an increasing sense that “cellular and individualized forms of vigilante action” is not only a feature of new forms of Hindutva non-state violence but an integral part of “Hindutva statecraft”.⁸⁸ What makes these laws potentially state transformational is how they have come to

⁸⁴ Yash Sharma and Laura Jenkins, *Legislation as Disinformation: The Love Jihad Conspiracy Theory in Law and Lived Experience*, unpublished conference draft 2022, p. 12.

⁸⁵ See e.g. Hannah Ellis-Petersen and Ahmer Khan, ‘They Cut Him into Pieces’: India’s ‘Love Jihad’ Conspiracy Theory Turns Lethal, <https://www.theguardian.com/world/2022/jan/21/they-cut-him-into-pieces-indias-love-jihad-conspiracy-theory-turns-lethal> (last accessed on 19 December 2022).

⁸⁶ For a detailed discussion of how Hindutva mob groups have been involved in instances of lynching against Muslims and Dalits, see Human Rights Watch, note 80.

⁸⁷ Sharma and Jenkins, note 84, p. 14.

⁸⁸ Hansen and Roy, note 41, p. 1.

blur the line between state and non-state. These laws reflect a steady erosion between the state and the most regressive manifestations of the society's xenophobic sentiment. "Love jihad" laws in particular show how the Indian state has both cultivated anti-minority majoritarian paranoia and then legally legitimized widely held rumors. Jenkins and Sharma have called these instances "legislation as disinformation" since they show how ideas like love jihad "morphed from a fringe rumor to a conspiracy theory spread through political networks" and then were "given credence through new laws".⁸⁹ In this sense, such laws are both "state propaganda and social rumor".⁹⁰ The state actively generates such conspiracy theories that stereotype minorities and entrench social prejudice, and in a feedback loop relies on popular consent to legislate disproportionate penal legislations to address the problem. The implementation of these laws on the ground has increasingly revealed that state institutions themselves operate with and as vigilantes. Jenkins and Sharma note that courts, the police and vigilante groups "act in close concert to monitor, intervene, and threaten any potential inter-faith relationships."⁹¹ The police have been reported to work in alliance with right-wing vigilante mob groups to target Muslim men and inter-faith couples, by filing cases against them or disciplining them outside legal cases.⁹² Officials working in courts meant to register marriages have been known to report inter-faith couples to right-wing groups, to facilitate their harassment and targeting. This reflects a broader pattern of "deinstitutionalisation" in India,⁹³ with an "emerging nexus between the state apparatus...and right-wing vigilante and extremist groups linked with the ruling BJP government in India."⁹⁴ Thus the actual operation of these laws reflect a fundamentally reworking on the relationship between state and society. Beyond legal abuse by state institutions, or legal impunity of non-state actors, these laws show how state and non-state are threatening to ideologically fuse together.

⁸⁹ *Sharma and Jenkins*, note 84, p. 2.

⁹⁰ *Sharma and Jenkins*, note 84, p. 4.

⁹¹ *Sharma and Jenkins*, note 84, p. 6.

⁹² See e.g. *Betwa Sharma and Ahmer Khan*, Hindu Vigilantes Work With Police to Enforce "Love Jihad" Law in North India, <https://theintercept.com/2021/07/03/love-jihad-law-india/> (last accessed on 19 December 2022).

⁹³ *Christophe Jaffrelot*, *Modi's India*, note 5, p. 255.

⁹⁴ *Sharma and Jenkins*, note 84, p. 15.

F. Conclusion

The Indian case shows how authoritarian legality is not just centered at the top of states. It shows how ideology driven authoritarianism seeks to remake Indian state and society by seeping into local state institutions and is driven by non-state actors. The recent use of anti-terror laws and the enactment of the Citizenship Amendment Act shows how the state seeks to delegitimize democratic activity of minorities and dissidents, to remove their participation from the public sphere, and to make their legal citizenship precarious and insecure. The “love jihad” laws legislation show how the law is being used to ensure that social interaction between Muslim minority groups and an imagined “Hindu” society. The legal abuse of expanding panel laws—on cow protection, religious conversion, and terrorism—not only entrench majoritarian religious norms but make minorities constantly vulnerable to arbitrary state action. The empowerment of right-wing vigilante groups—most clearly visible in our discussion on cow protection and “love jihad” laws—shows how a creeping deinstitutionalization of the state is as much a feature of India’s authoritarianism as an increasing centralization in Modi.

Any account of contemporary authoritarianism in India cannot ignore these nuances of how the law is being used to remake Indian state and society. The imperative, we suggest, is to understand two things. First, the rhetoric behind, and the social circumstances through which certain laws are legislated and how the law is used to buttress the authority of the charismatic leader. The CAA and “love jihad” laws have been legislated against the backdrop of a confected panic about the Muslim population: the former, rendering all Muslims as suspected “illegal migrants”, and the latter against the panic that Muslim men are “stealing” Hindu women. These laws simultaneously buttressed the authority of Modi as the authoritarian figure—along with many other authoritarian political actors—who are seen to be taking strong action against these purported threats. Second, what are the socio-legal lives of these laws? Hindutva groups have used these laws, aided by the police and bureaucracy, to target Muslim and Dalit groups. The law thus gives cover to violence, by state and non-state actors, against minority groups. Targeted groups may mobilize to defend themselves against these laws. These dynamics invite further research into how such laws mobilize publics and counter-publics.