

## THEY ARE NOT THE CHILDREN OF THIS SOIL: AN ANALYSIS OF RELIGIOUS MINORITIES IN INDIA AND THEIR TREATMENT UNDER MODI'S REGIME

### INTRODUCTION

On June 18<sup>th</sup>, 2023, as the sun began to set in Surrey, British Columbia, Indian-born Canadian-national Hardeep Singh Nijjar, head of Guru Nanak Sikh Gurudwara,<sup>1</sup> was murdered outside of his place of worship.<sup>2</sup> A leader in the predominately diasporic Khalistan movement,<sup>3</sup> Nijjar was officially designated a “terrorist” by the Indian government, who claimed that Nijjar was funneling money from Canada into India for the purpose of causing upheaval in the state of Punjab.<sup>4</sup> Nijjar was once actively involved in two Sikh separatist groups: the Khalistan Tiger Force and Babbar Khalsa International, the latter of which India has officially designated a terrorist organization.<sup>5</sup> In the ‘70s, ‘80s, and ‘90s, Sikh insurgency left substantial suffering in its wake, particularly in Punjab and northern India, but also worldwide (specifically the incident of

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<sup>1</sup> A gurudwara is a place of Sikh community and worship; Sikhism is a dharmic, monotheistic religion originating from the Indian subcontinent. *Basics of Sikhism: What do Sikhs Believe?*, DISCOVER GURU NANAK, <https://discovergurunanak.com/basics-of-sikhism> (last visited Aug. 7, 2024); Kamala Elizabeth Nayar, *The Making of Sikh Space: The Role of the Gurudwara*, in *ASIAN RELIGIONS IN B.C.* 43 (Larry DeVries et al. eds., 2010).

<sup>2</sup> Sakshi Dayal, *Hardeep Singh Nijjar: Who Was the Sikh Leader Murdered in Canada?*, REUTERS (Sept. 19, 2023, 5:45 AM), <https://www.reuters.com/world/who-was-hardeep-singh-nijjar-whose-death-fuelled-india-canada-tensions-2023-09-19/>.

<sup>3</sup> The Khalistan movement is reflective of a Sikh desire for an official homeland following the partition of India and Pakistan along predominately religious lines. Khalistan activists advocate for the creation of the state of Khalistan (literally “land of the Khalsa”), which would encompass the current states of Punjab, Haryana, Himachal Pradesh, as well as parts of Uttarakhand and Gujarat. Khalistan’s purported capital would be the Himalayan city of Shimla. Referendums and activism on this issue have been deemed “illegal” by the Indian government. See Naomi Canton, *Banned SFJ Leader Unveils ‘Khalistan Map’, with Shimla as ‘Capital’, Before Pak Press in Lahore*, TIMES INDIA (June 10, 2022, 6:42 AM), <https://timesofindia.indiatimes.com/india/banned-sjf-leader-unveils-khalistan-map-with-shimla-as-capital-before-pak-press-in-lahore/articleshow/92090727.cms>. This movement seems to have predominately taken root in the Sikh diaspora of North America, with support dwindling in Punjab and the wider area as time has passed. CATARINA KINNVALL, *GLOBALIZATION AND RELIGIOUS NATIONALISM IN INDIA: THE SEARCH FOR ONTOLOGICAL SECURITY* 121–25, 168 (2006).

<sup>4</sup> *NIA Files Charges Against Khalistan Terrorist Nijjar*, INDIAN EXPRESS (Nov. 26, 2021, 3:53 AM), <https://indianexpress.com/article/india/nia-files-charges-against-khalistan-terrorist-nijjar-7641825/>.

<sup>5</sup> Dayal, *supra* note 2.

Canadian-based Air India Flight 182)<sup>6</sup> that is not to be diminished.<sup>7</sup> Neither is the Indian government's violent response to that insurgency to be diminished. However, the heyday of Sikh insurgency has long past (more than twenty years ago) and Nijjar himself moved to Canada in 1997.<sup>8</sup>

Just three months after Nijjar's death, Canadian Prime Minister Justin Trudeau publicly indicated that his government was investigating credible information which alleged that the Indian government was linked to Nijjar's "assassination."<sup>9</sup> Reportedly, Prime Minister Trudeau broached the topic with Indian Prime Minister Narendra Modi at the 2023 G20 Summit in New Delhi; following the official accusation, India's diplomatic response was entirely dismissive, and in turn, accused Canada of meddling in its internal affairs.<sup>10</sup> Each country has since expelled the other's diplomat.<sup>11</sup>

The allegation of the Indian government's involvement in Nijjar's murder is just one of many accusations leveled at India's increasingly illiberal regime. More recently, the United States government claimed to have foiled an additional assassination plot against a colleague of Nijjar's, who is an American citizen and Sikh activist.<sup>12</sup> The suspect was arrested, and the United States alleges that the suspect was "directed by an Indian government official," though the official was never named.<sup>13</sup> Reportedly, the Indian government reacted with shock and concern.<sup>14</sup>

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<sup>6</sup> Rhea Mogul, *Why Is India So Worried About Sikh Separatist Calls for Khalistan?*, CNN (Oct. 6, 2023, 10:39 PM) WORLD, <https://www.cnn.com/2023/10/06/india/india-canada-sikh-khalistan-analysis-intl-hnk>.

<sup>7</sup> See Jagrup Singh Sekhon & Nirmal Singh, *Rise, Dynamics, and Decline of Violence in Punjab: A Critical Reassessment of Existing Explanations*, 22 J. PUNJAB STUD. 43, 43–44, 47–51, 55, 58, 60 (2015) (explaining the history of Sikh insurgency in Punjab). Sikh insurgents were responsible for the killing of an Indian prime minister. *Id.* at 48. This history of violence is not to be minimized but is not the focus of this Note.

<sup>8</sup> Dayal, *supra* note 2; Daniel Block, *The Killing in Canada Shows What India Has Become*, THE ATLANTIC (Sept. 20, 2023, 6:19 PM), <https://www.theatlantic.com/international/archive/2023/09/canada-nijjar-killing-india-trudeau-sikh/675383/>.

<sup>9</sup> Rob Gillies & Krutika Pathi, *Canada Expels an Indian Diplomat as It Investigates a Sikh's Killing. India Denies an Alleged Link*, ASSOCIATED PRESS (Sept. 19, 2023, 12:00 AM), <https://apnews.com/article/india-sikh-slaying-canada-indian-government-trudeau-0e0d002ed02f25df4e507a362dee2d0c>.

<sup>10</sup> *Id.*; Block, *supra* note 8.

<sup>11</sup> Paula Newton & Rhea Mogul, *India Expels Canadian Diplomat in Tit-for-Tat Move as Spat over Assassinated Sikh Activist Deepens*, CNN WORLD (Sept. 19, 2023, 11:50 AM), <https://www.cnn.com/2023/09/18/americas/canada-hardeep-singh-nijjar-india-intl/index.html>.

<sup>12</sup> Phil McCausland, *US Says It Foiled Alleged Plot to Assassinate Sikh Activist in New York*, BBC (Nov. 29, 2023), <https://www.bbc.com/news/world-us-canada-67570007>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

The rise of Prime Minister Modi's administration, at the very least, has coincided with an increase in the persecution of religious minorities.<sup>15</sup> It is worth noting that in the past three years, Sikh activism has been instrumental in undermining some of Modi's most important reforms and proposals.<sup>16</sup> Inter-faith violence, even if not stemming directly from government actors, is the norm under Modi's regime. The United States Commission on International Religious Freedom has designated India as a "Country of Particular Concern," classifying its treatment of minorities as on par with Afghanistan, Pakistan, Eritrea, and North Korea.<sup>17</sup> Modi's political party, the Bharatiya Janata Party (BJP), does little to bolster the administration's poor track record on religious freedom. Party member Gyan Dev Ahuja publicly called for the killing of "anyone involved in cow slaughter," the holy animal of Hinduism; this could be understood as a euphemism for the killing of religious minorities, who do not share the same reverence for cows and may regularly consume them for food.<sup>18</sup> Though Sikhs are a current target of the Modi regime, religious minorities such as Muslims, Christians, and Jews have been consistent, if less prolific, targets.<sup>19</sup>

Indian Prime Minister Narendra Modi commands a unique nation. India is a vast country with the highest population worldwide, comprised of a myriad of religions, ethnicities, and demographics.<sup>20</sup> A vast peninsula in South Asia, India is a country of highs and lows—from the towering peaks of the Himalayas to the shallows of Adam's Bridge.<sup>21</sup> Yet, modern, democratic India is not without its blemishes, most cavernous of which is

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<sup>15</sup> See Block, *supra* note 8.

<sup>16</sup> See, e.g., *id.*

<sup>17</sup> Compare U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 3–4 (2013) (listing India as a Tier 2 country before Modi's election in 2014), with U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 11, 24–25, 83–84 (2023) (listing India as a country of particular concern).

<sup>18</sup> P.K. Balachandran, *US Commission on International Religious Freedom Seeks Targeted Sanctions Against Indian Violators*, THE CITIZEN (May 3, 2023, 12:29 AM), <https://www.thecitizen.in/world/us-commission-on-international-religious-freedom-seeks-targeted-sanctions-against-indian-violators-898867>; *Violent Cow Protection in India*, HUM. RTS. WATCH (Feb. 18, 2019), <https://www.hrw.org/report/2019/02/19/violent-cow-protection-india/vigilante-groups-attack-minorities>.

<sup>19</sup> See Simran Jeet Singh & Gunisha Kaur, *Why India is Targeting Sikhs at Home and Around the World*, TIME (Dec. 5, 2023, 2:39 PM), <https://time.com/6342873/india-sikhs-persecution/>; U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT 30–31 (2024).

<sup>20</sup> Akhilesh Pillalamarri, *India is the World's Most Populous Country: What it Means*, THE DIPLOMAT (Jan. 25, 2023), <https://thediplomat.com/2023/01/india-is-the-worlds-most-populous-country-what-it-means/>; Muzaffar Alam et al., *India: People*, ENCYC. BRITANNICA (Sept. 6, 2024), <https://www.britannica.com/place/India/People>.

<sup>21</sup> Romila Thapar et al., *India: Land*, ENCYC. BRITANNICA, <https://www.britannica.com/place/India#ref46358> (Sept. 27, 2024); Sanat Pai Raikar, *Adam's Bridge*, ENCYC. BRITANNICA (Aug. 23, 2024), <https://www.britannica.com/place/Adams-Bridge>.

the current administration and the BJP's treatment of and attitude towards religious minorities. This attitude tends to manifest as "Hindu nationalism," a pervasive ideology of the BJP. Hindu nationalism as touted by the BJP is no better embodied than in V.D. Savarkar's 1920s manifesto, *Essentials of Hindutva*. Savarkar embraces Hinduism as not merely a religion, but a deterministic marker of identity, ethnicity, and culture, all in one.<sup>22</sup>

And no word can give full expression to this racial unity of our people as the epithet, Hindu, does. Some of us were Aryans and some Anaryans; but Ayars and Nayars – we were all Hindus and own a common blood. . . . Some of us are monists, some, pantheists; some theists and some atheists. But monotheists or atheists—we are all Hindus and own a common blood. We are not only a nation, but a *Jati*, a born brotherhood.<sup>23</sup>

Further, Savarkar asserts that the term Hindu ought to denote more than simply a religious identity—"Hindu" unites all under an "ancient banner representing a common race and a common civilization."<sup>24</sup>

Despite this articulated sense of unity, Savarkar's Hindu nationalism clearly designates the Christian and Muslim as an outsider, even if Christian and Muslim ancestors had long since intermarried into and inherited the traditions of the Hindu.<sup>25</sup> Savarkar writes, "[t]heir mythology and Godmen, ideas and heroes are not the children of this soil. . . . [t]heir love is divided."<sup>26</sup> Perhaps this prevailing damnation explains why as of October 3<sup>rd</sup>, 2023, there were thirty-seven persons of predominantly Abrahamic religions<sup>27</sup> detained in India as "prisoners of conscience."<sup>28</sup> If Modi's India is willing to publicly persecute Sikh Indians, who are still considered "children of the soil" according to Hindu nationalists, what more is the country willing to do against Muslims and Christians? Despite Hindu identity being broadened to encompass culture,

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<sup>22</sup> VINAYAK DAMODAR SAVARKAR, *HINDUTVA: WHO IS A HINDU?* 76–80, 84–86, 89–92 (5th ed. 1969) (alternatively titled *ESSENTIALS OF HINDUTVA*).

<sup>23</sup> *Id.* at 89.

<sup>24</sup> *Id.* at 107.

<sup>25</sup> *Id.* at 113.

<sup>26</sup> *Id.*

<sup>27</sup> Abrahamic religions are religions that worship and believe in the God of Abraham—most notably, these are Judaism, Christianity, and Islam. See Agehananda Bharati & William Johnston, *Monasticism: The Abrahamic Religions*, *ENCYC. BRITANNICA* (Dec. 17, 2023), <https://www.britannica.com/topic/monasticism/The-Abrahamic-religions>.

<sup>28</sup> *USCIRF Reiterates Concerns on Religious Freedom in India, Calls for Release of Religious Prisoners of Conscience*, U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, (Oct. 3, 2023), <https://www.uscifr.gov/news-room/releases-statements/uscirf-reiterates-concerns-religious-freedom-india-calls-release>.

identity, and varying levels of theism, it is apparent that Savarkar does not afford Christianity and Islam the protection of this nationalistic identity, and thus, their “infractions” against Hindu society are to be ruthlessly prosecuted under Indian criminal law.<sup>29</sup>

Such a contention runs as a deep current in Modi’s government, party, and nation: excluding Christians and Muslims and minority religious groups in India from the rights and safety afforded to Hindu Indians. From a historical perspective, it is impossible to deny the contributions of these minority religious groups to the history and culture of India—minorities in India are still children of the soil, regardless of their religion. But further, even if religious minorities were *not* considered “Hindu Indians,” international law and the Indian Constitution still mandate their equal protection.

This Note analyzes the present situation in India with respect to minority religions, particularly with respect to Christians and Muslims. Part I delves into a brief history of religion and religious minorities in India. Part II analyzes the historical development of current law, on the national and state levels, which is frequently implemented to the sole benefit of Hindu Indians and to the detriment of India’s religious minorities. Part III analyzes the application of this law to particular cases of religious minorities and concludes that Indian Hindu nationalists are weaponizing provisions of national and state law to deny religious freedom to religious minorities, specifically Christians and Muslims.

#### I. ‘ITS NAME IS BHARAT, AND THE PEOPLE ARE BHARATI’—A BRIEF HISTORY OF RELIGION AND RELIGIOUS MINORITIES IN INDIA

It is said that besides India, there is no civilization on earth that has retained such a “long cultural continuity.”<sup>30</sup> The subcontinent’s northwestern region boasts impressive ancient ruins, dated to approximately 2500 BCE, and proof of continuously inhabited regions is abundant.<sup>31</sup> As early civilizations flourished and declined, it is widely accepted that sometime around the first millennium BCE, Indo-European peoples crossed into the region.<sup>32</sup> The ancient hymns of the Indo-Europeans (also called Aryans) document a subcontinent in decline, and the Indo-Europeans brought with them worship of Agni, deity of fire, and

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<sup>29</sup> See SAVARKAR, *supra* note 22, at 113. After the British partition, it is evident that Sikhism has also fallen out of favor with Hindu nationalism, though Savarkar considers the Sikh as “Hindu” in his book. *Id.* at 39; see *infra* Section III, pp. 24–28, 30–33 and note 178.

<sup>30</sup> A.L. Basham, *Introduction*, in A CULTURAL HISTORY OF INDIA 1, 2 (A.L. Basham ed., 1975).

<sup>31</sup> BURTON STEIN, A HISTORY OF INDIA 15–19 (David Arnold ed., 2d ed. 2010).

<sup>32</sup> *Id.* at 47.

Indra, king of the gods.<sup>33</sup> At the heart of this Aryan religion was the idea that all of mankind were created by a vicious dismemberment of *Prajapati*, the first created man.<sup>34</sup> As religion became ritualistic, ancient manuals discuss how the burning of sacrificial flames designated areas of habitation for the Aryan people.<sup>35</sup>

From this ritualistic lifestyle came the separation of peoples into religious clans, with the ruling clansmen (“kshatriya”) and the priesthood (“brahman”) elevated in status above lower Aryans and pre-Aryan peoples.<sup>36</sup> By the first half of the first millennium, the ancient “Hymn of the Primeval Man” had succinctly categorized the Aryan as belonging to one of the four *varnas* (castes): brahmans, kshatriyas, *vaishyas* and *shudras*.<sup>37</sup> One’s caste affected one’s level of “pollution”; pollution in folk religion had to deal with ritual purity, but also connoted negative magic, poor karma, and spiritual profanity.<sup>38</sup> In 400 BCE, the epic *Mahabharata* delineated the eras of the world, where mankind was plunged into moral darkness, known as the *kaliyuga*, which necessitated the creation of government and caste in order to obligate man to his moral duties.<sup>39</sup> Caste duties involved fees and gifts paid to the highest caste, the brahman.<sup>40</sup> Caste was one’s legal and community status.<sup>41</sup>

The theory of caste and its correlation to a person’s spiritual reality was an insidious principle, one that permutated and survived until India received its independence from Britain.<sup>42</sup> Caste is so characteristic of India that even Indian Muslims and Indian Christians either accepted the primordial theory of caste or adopted their own.<sup>43</sup> Leather workers and blacksmiths were considered lower than the lowest caste, and referred to

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<sup>33</sup> *Id.* at 47–48; Wendy Doniger, *Indra*, ENCYC. BRITANNICA (July 24, 2024), <https://www.britannica.com/topic/Indra>.

<sup>34</sup> STEIN, *supra* note 31, at 48.

<sup>35</sup> *Id.* at 49–50.

<sup>36</sup> *Id.* at 50–52. The pre-Aryan peoples were thought to have been descendants of ancient Harappan civilization, at least in this context. However, it is apparent that the infamous caste system had its roots in early India, and a history of the Harappan civilization is beyond the scope of this Note. *Id.*

<sup>37</sup> *Id.* at 51–52. Subgroups of each caste also existed, in which there was some possibility of caste mobility – these are *jati*. *Id.*

<sup>38</sup> See Gregory Forth, *Purity, Pollution, and Systems of Classification*, in THE INTERNATIONAL ENCYCLOPEDIA OF ANTHROPOLOGY 1, 4–5, 7, 9 (Hilary Callan ed., 2018).

<sup>39</sup> STEIN, *supra* note 31, at 56–57.

<sup>40</sup> *Id.* at 51–52.

<sup>41</sup> See *id.* at 51–53, 56–57.

<sup>42</sup> See Rahul Choragudi et al., *Introduction: The Career of Caste in Public Policy*, in CASTE MATTERS IN PUBLIC POLICY 1, 1–4, 17–18 n.4 (Rahul Choragudi et al. eds., 2023).

<sup>43</sup> N. Jayaram, *Enumerating Caste in the Census*, in CASTE MATTERS IN PUBLIC POLICY, *supra* note 42, at 47, 55.

as untouchables; this was due to the fact that these professions required a person to handle sacred cattle after the animal's death.<sup>44</sup>

As Aryan-Brahmanism influenced the development of Hinduism, Hinduism superseded Brahmanism as the dominant religious force in the region.<sup>45</sup> The particular moment when Hinduism developed is nebulous. Much like the theory of Hinduism itself, which posits karma and rebirth,<sup>46</sup> so too did Hinduism evolve from pre-historic religion and into the force of nature it is today.<sup>47</sup>

During this time, Buddhism flourished and declined (once the religion of choice of the unifier of India, Emperor Ashoka), and Jainism promoted related ascetic practices.<sup>48</sup> While the ancient subcontinent was heavily steeped in dharmic religion, there would soon arrive the presence of Abrahamic religious minorities.

According to oral tradition, Jewish traders of the Bene Israel community arrived in the western Indian Konkan sometime around 175 BCE, as survivors of a shipwreck.<sup>49</sup> This mythical origin story purports that this peculiar ethnic group was descended from the lost tribe of Israel, and that exactly seven men and seven women survived, the holy number of God.<sup>50</sup> There is no evidence for this theory, which closely resembles a *Chitpavan* legend,<sup>51</sup> but the fact remains that Judaism somehow made its way into the Indian subcontinent at some pre-Christ period. The DNA markers of the Bene Israel differs markedly from those of any ethnic Indians.<sup>52</sup> Instead, the DNA markers are highly suggestive of ancient Jewish and Semitic origins, most likely from a migrating patriarch of the distant past.<sup>53</sup> Caste certainly affected these Bene Israelites, who were reported to have been a caste above untouchability, yet were treated as lowly subjects.<sup>54</sup> The stories of the Jewish community of Cochin, India, tell

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<sup>44</sup> STEIN, *supra* note 31, at 52.

<sup>45</sup> *Id.* at 79–80.

<sup>46</sup> Sarvepalli Radhakrishnan, *Hinduism*, in A CULTURAL HISTORY OF INDIA, *supra* note 30, at 60, 76–77.

<sup>47</sup> *Id.* at 61–62, 77.

<sup>48</sup> See Bhikshu Sangharakshita, *Buddhism*, in A CULTURAL HISTORY OF INDIA, *supra* note 30, at 83, 94, 97–99; A.N. Upadhye, *Jainism*, in A CULTURAL HISTORY OF INDIA, *supra* note 30, at 100, 100–02, 106–09.

<sup>49</sup> Tudor Parfitt & Yulia Egorova, *Genetics, History, and Identity: The Case of the Bene Israel and the Lemba*, 29 CULTURE, MED. & PSYCHIATRY 193, 205–06 (2005).

<sup>50</sup> *Id.* at 193–94, 205–06; Elaine Goodfriend, *Seven, the Biblical Number*, THE TORAH.COM (Sept. 22, 2024), <https://www.thetorah.com/article/seven-the-biblical-number>.

<sup>51</sup> Parfitt & Egorova, *supra* note 49, at 208.

<sup>52</sup> *Id.* at 210.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 207–08.

of a group of Jews who arrived on the subcontinent sometime after the temple was destroyed in 70 CE.<sup>55</sup>

Christianity swiftly followed—the *Acta Thomae*, an apocryphal writing, discusses the history of Saint Thomas, who received a vision from Christ to preach the Gospel in India sometime after the ascension of Christ and Pentecost.<sup>56</sup> Eastern Orthodox Christian hymns place St. Thomas as the apostle who baptized the people of Kerala.<sup>57</sup> Other traditions claim that St. Bartholomew was the first missionary to India, leaving behind his relics—though in ancient writings “India” was sometimes used interchangeably with the greater Arabian peninsula.<sup>58</sup> Regardless of the persuasion, Christianity has verifiable, historical roots in the Indian subcontinent.<sup>59</sup>

As for Islam, the religion spread in the Indian subcontinent in two manners: to the north, Islam was propagated by land, and to the south, by sea.<sup>60</sup> In south India, Malabar, also known as *al-Ma’bar* (“the place of crossing”), indicated a port routinely accessed by Arabian Muslims, who brought *Sufi* Islam to India.<sup>61</sup> The mystical emphasis of *Sufi* Islam<sup>62</sup> resonated well with the native Hindu populations; Hinduism itself is an esoteric and mystical tradition.<sup>63</sup> Certainly, by the sixteenth century, after the Mughals invaded India, Islam cemented itself as a critical force in Indian history.<sup>64</sup> After the consolidation of Hindu and Rajput Indians, Mughal Emperor Akbar instituted a variety of reforms, such as a ban on pilgrimage taxation, female infanticide, and forced marriages.<sup>65</sup> The Taj

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<sup>55</sup> Sifra Lentin, *Port of Bombay and Its Jewish Communities*, GATEWAY HOUSE (Nov. 16, 2023, 3:36 PM), <https://www.gatewayhouse.in/port-city-of-bombay-and-its-jewish-communities/>.

<sup>56</sup> A.E. MEDLYCOTT, *INDIA AND THE APOSTLE THOMAS* 1, 4–5, 29–30 n.1 (1905).

<sup>57</sup> *Id.* at 20–21, 24, 26, 29–30 n.1, 31–33.

<sup>58</sup> BUTLER’S LIVES OF THE SAINTS 232 (John Cumming ed., new full ed. 1998).

<sup>59</sup> Paul Zacharia, *The Surprisingly Early History of Christianity in India*, SMITHSONIAN JOURNEYS TRAVEL Q.: INDIA (Feb. 19, 2016), <https://www.smithsonianmag.com/travel/how-christianity-came-to-india-kerala-180958117/>.

<sup>60</sup> JAMAL MALIK, *ISLAM IN SOUTH ASIA: A SHORT HISTORY* 1–2 (2008).

<sup>61</sup> *Id.* at 38–39.

<sup>62</sup> Sufi Islam is an Islamic emphasis on mysticism, purification, and spirituality. David Cook, *Mysticism in Sufi Islam*, OXFORD RSCH. ENCYC. OF RELIGION (May 4, 2015), <https://oxfordre.com/religion/display/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-51>.

<sup>63</sup> MALIK, *supra* note 60, at 38–39; *see also* Ronald Powell, *Mystical Traditions in the Great World Religions*, 1 MCNAIR SCHOLARS J. 119, 121, 128, 130–33 (2000).

<sup>64</sup> S.M. EDWARDES & H.L.O. GARRETT, *MUGHAL RULE IN INDIA* 1–3, 6, 8, 10–11, 19–21 (1930).

<sup>65</sup> *Id.* at 29–32, 40–43.



Mahal, an iconic marvel of Indian symbolism, was constructed by a Muslim Mughal, bearing signature motifs of Islamic architecture.<sup>66</sup>

It is unfair of Savarkar, then, to consider the love of an Indian Muslim and an Indian Christian as being “divided.”<sup>67</sup> Indian Christians and Jews—whether descended from ancient Jewish populations, converts from the days of St. Thomas, or recent missionaries—are *essentially* Indian, as many have roots and ancestry to the days of the Aryans or Dravidians. Indian Muslims, whether native converts or descendants of Mughal rule, have also made a stark impact on their homeland.<sup>68</sup> Even the assertion that Abrahamic faiths have no heroes originating from the Indian subcontinent is inaccurate: early Muslim traditions (arguably adopted first by some gnostic<sup>69</sup> Christians), place Adam, the first man, as first plummeting to earth in Sri Lanka, atop Adam’s Peak, and crossing into the Indian subcontinent via Adam’s Bridge, a shoal connecting Sri Lanka and India.<sup>70</sup>

Yet even if these minority traditions had no tangible roots to the Indian subcontinent, it is still no excuse for their abuse at the hands of Modi’s government and populace. Both the Indian Constitution and international law forbid this.

## II. RELEVANT NATIONAL, STATE, AND INTERNATIONAL LAWS REGARDING RELIGION, BLASPHEMY, AND ANTI-CONVERSION

### *A. Religion and Indian Constitutional Law*

The Indian Constitution, adopted in 1949, guarantees all Indians a right to equality under the law regardless of religion.<sup>71</sup> Although Part III, Article 25 also guarantees Indians the right to “freedom of conscience and the right freely to profess, practice and propagate religion,”<sup>72</sup> Article 25

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<sup>66</sup> *About Taj Mahal: Architecture*, TAJ MAHAL, <https://www.tajmahal.gov.in/architecture.aspx> (last visited Sept. 16, 2024).

<sup>67</sup> SAVARKAR, *supra* note 22, at 113.

<sup>68</sup> *E.g.*, Syed Amin Jafri, *22 Indians Among World’s Most Influential Muslims*, TIMES INDIA (Oct. 12, 2015, 2:12 PM), <https://timesofindia.indiatimes.com/india/22-indians-among-worlds-influential-muslims/articleshow/49315830.cms>.

<sup>69</sup> Gnosticism is a system of mystical ideas commonly applied to Judaism and Christianity in the ancient world. Christian early church fathers denounced Gnosticism as a heresy in the first century. *See* Rebecca Denova, *Gnosticism*, WORLD HIST. ENCYC. (Apr. 9, 2021), <https://www.worldhistory.org/Gnosticism/>.

<sup>70</sup> RONIT RICCI, *ISLAM TRANSLATED: LITERATURE, CONVERSION, AND THE ARABIC COSMOPOLIS OF SOUTH AND SOUTHEAST ASIA* 136–37 (2011).

<sup>71</sup> India Const. arts. 14–15.

<sup>72</sup> *Id.* art. 25, cl. 1.

explicitly states that it cannot be construed to prevent the government from enacting laws predicated on religious identity.<sup>73</sup>

Article 25(2)(b) seems to suggest that government may provide “for social welfare and reform . . . to all classes and sections of Hindus”—defined as anyone who practices Hinduism, Buddhism, Sikhism, and Jainism.<sup>74</sup>

Defined as a “sovereign[,] socialist[,] *secular*[,] democratic republic,”<sup>75</sup> India’s Constitution sought also to mend the legacy of caste in India—a concept which traces back to the days of Aryan Brahmanism.

### *B. Religion and Indian Federal Law*

The Indian Constitution describes India as a “union of states,” and scholars have remarked on the nation’s unique blend of unitary federalism.<sup>76</sup> The Constitution designates one hundred realms of society in which the federal government has sole jurisdiction, such as military policy and atomic energy.<sup>77</sup> The states are reserved power in sixty-six areas of public life, such as policing and local health, and there are fifty-two areas in which the federal government and the states exercise concurrent jurisdiction.<sup>78</sup> Among these fifty-two areas are criminal law, criminal procedure, and family law.<sup>79</sup>

Prior to 1927, there were no blasphemy laws on the books in India:<sup>80</sup> John R. de Lingen writes that historically, Hinduism encouraged intellectual and spiritual exploration: “man may think [as far] as he can; there is no blasphemy in investigation.”<sup>81</sup> The Hindu mind accepts a formless God, who “informs and sustains countless forms.”<sup>82</sup>

The early 1920s, while Britain was still an occupying power in the region, saw a back-and-forth of hyper-critical discourse between Muslims and Hindus, culminating in the anonymously published *Rangila Rasul*,<sup>83</sup>

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<sup>73</sup> *Id.* art. 25, cl. 2.

<sup>74</sup> *Id.* art. 25, cl. 2(b).

<sup>75</sup> *Id.* pmb.(emphasis added).

<sup>76</sup> India Const. art. 1, cl. 1; Baby Huma, *Understanding Indian Federalism*, 76 INDIAN J. POL. SCI. 792, 792 (2015).

<sup>77</sup> Huma, *supra* note 76, at 793.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Shagun Sharma, *Blasphemy Laws: Comparative Analysis in Context of India and Pakistan*, 8 INT’L J. SCI. & RSCH. 1156, 1156 (2019).

<sup>81</sup> O.S. Geerganan, *Introduction* to JOHN R. DE LINGEN, AN INTRODUCTION TO THE HINDU FAITH 1, 1–2 (Pahlad Ramsurrun ed., 2008).

<sup>82</sup> Radhakrishnan, *supra* note 46, at 70.

<sup>83</sup> GIRJA KUMAR, THE BOOK ON TRIAL: FUNDAMENTALISM AND CENSORSHIP IN INDIA 9, 47–48, 50, 53–54 (1997). The author is most likely thought to have been a man named Pandit

which was derogatory towards Islamic theology and history.<sup>84</sup> As a stop-gap, English powers amended the penal code of 1860 to include Article 295A, which provided that it was a crime to commit “deliberate and malicious acts intended to outrage religious feelings of any class by insulting its . . . religious belief.”<sup>85</sup>

**• Indian Penal Code Article 295: Injuring or defiling place of worship, with intent to insult the religion of any class.**

Article 295 contains a scienter requirement, providing that the perpetrator must injure or defile this place of worship, “with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion.”<sup>86</sup>

**• Indian Penal Code Article 295A: Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.**

The addendum to Article 295 provides that “insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with [a] fine, or with both.”<sup>87</sup>

These laws have been retained until today; the Indian penal code likewise features additional sections that reference insult or injury to religion.

**• Indian Penal Code Article 153A: Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.**

A perpetrator who promotes disharmony or feelings of enmity, hatred or ill-will on the basis of race, caste, or *religion* can be punished with a fine, three years’ imprisonment, or both.<sup>88</sup>

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Champovati. *Id.* at 47, 53. The publisher was murdered after consistently refusing to give up the author’s name. *Id.*

<sup>84</sup> See *id.* at 48; Neeti Nair, *Bhagat Singh as ‘Satyagrahi’: The Limits to Non-Violence in Late Colonial India*, 43 MOD. ASIAN STUD. 649, 655 n.21 (2009).

<sup>85</sup> Indian Penal Code, 1860, § 295A; see also Sharma, *supra* note 80. Article 295A was retained as law in Pakistan following the partition of 1947. *Id.* Successive administrations have added to this provision so that a violation of Article 295A in Pakistan is now punishable by death. *Id.* at 1159–60.

<sup>86</sup> Indian Penal Code, 1860, § 295.

<sup>87</sup> *Id.* § 295A.

<sup>88</sup> *Id.* § 153A (emphasis added).

• **Indian Penal Code Article 296: Disturbing religious assembly.**

Voluntary disturbance of a *lawfully engaged* religious assembly, in the pursuit of religious worship or religious ceremony is punishable with a fine, a year's imprisonment, or both.<sup>89</sup>

• **Indian Penal Code Article 297: Trespassing on burial places, etc.**

Trespassing, "with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby" as well as impeding a burial or funerary ceremony, is punishable with a fine, a year's imprisonment, or both.<sup>90</sup>

• **Indian Penal Code Article 298: Uttering words, etc., with deliberate intent to wound religious feelings.**

This is most akin to a modern "hate speech law"; a perpetrator who, "with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person" can be punished with a fine, a year's imprisonment, or both.<sup>91</sup>

In addition to these penal code provisions, India's first independent Parliament sought to pass nationwide anti-conversion laws, which would require all missionaries to be licensed and all conversions to be logged with the state.<sup>92</sup> Further bill proposals suggested labeling Islam, Christianity, Judaism, and Zoroastrianism as "non-Indian religions."<sup>93</sup> These bills failed in Parliament and thus were not passed at the national level.<sup>94</sup> However, the failed national laws have been superseded by *state-level* anti-conversion laws.

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<sup>89</sup> *Id.* § 296 (emphasis added).

<sup>90</sup> *Id.* § 297.

<sup>91</sup> Indian Penal Code, 1860, § 298.

<sup>92</sup> TARIQ AHMAD, L. LIBR. OF CONG., GLOB. LEGAL RSCH. DIRECTORATE, STATE ANTI-CONVERSION LAWS IN INDIA 2 (2018) (quoting IQTIDAR KARAMAT CHEEMA, U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, CONSTITUTIONAL AND LEGAL CHALLENGES FACED BY RELIGIOUS MINORITIES IN INDIA 4 (2017)).

<sup>93</sup> FURQUAN AHMED ET AL., A STUDY OF COMPATIBILITY OF ANTI-CONVERSION LAWS WITH RIGHT TO FREEDOM OF RELIGION IN INDIA 29, 31 (2008).

<sup>94</sup> *Id.*

### C. Religion and State Law

The states of Odisha, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Rajasthan, Tamil Nadu, Jharkhand, Uttarakhand, and Haryana all have anti-conversion laws, either enacted statewide or at the municipal level.<sup>95</sup> States without anti-conversion laws have considered enacting them;<sup>96</sup> the Indian Ministry of Law and Justice<sup>97</sup> has said that nationwide anti-conversion laws are constitutionally tenuous, calling it “purely a state subject.”<sup>98</sup>

Anti-conversion laws come in various strains. States such as Odisha, Madhya Pradesh, Gujarat, and Chhattisgarh purport to only ban *forced conversion*—most often *love jihad*, the conversion of brides to Islam through marriage.<sup>99</sup> The Becket Fund for Religious Liberty identifies common elements to all anti-conversion laws: the prevention of conversions, “‘carried out’ by ‘forcible or ‘fraudulent’ means or by ‘allurement’ or ‘inducement.’”<sup>100</sup> Some states also impose additional penalties if the converted person was a woman or a minor—again, it can be assumed the motivation is to prevent love jihad.<sup>101</sup>

### D. Religion and International Law

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<sup>95</sup> See LUKE WILSON, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ISSUE UPDATE: INDIA’S STATE-LEVEL ANTI-CONVERSION LAWS 1, 3 (2023); AHMAD, *supra* note 92, at 3–5; The Haryana Prevention of Unlawful Conversion of Religion Act, 2022. *But see* AHMAD, *supra* note 92, at 14–15 (noting that the anti-conversion Act in Tamil Nadu was later repealed).

<sup>96</sup> *E.g.*, Krishna Kumar, *Studying Anti-Conversion Laws of Other States, Says Maharashtra Dy CM Fadnavis*, ECON. TIMES (Dec. 10, 2022, 1:26 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/studying-anti-conversion-laws-of-other-states-says-maharashtra-dy-cm-fadnavis/articleshow/96119084.cms> (reporting how the Maharashtra government considered enacting its own anti-conversion laws).

<sup>97</sup> The Ministry of Law and Justice is a national authority comprised of India’s Legislative Department, Department of Legal Affairs, and Department of Justice. *About the Ministry*, MINISTRY OF L. & JUST., <https://lawmin.gov.in/about-us/about-the-ministry> (Mar. 9, 2023).

<sup>98</sup> *National Anti-Conversion Law Not Tenable: Law Ministry*, DECCAN HERALD (April 15, 2015, 5:24 PM), <https://www.deccanherald.com/content/471944/national-anti-conversion-law-not.html>.

<sup>99</sup> *Id.*; Andrea Malji & Syed Tahseen Raza, *The Securitization of Love Jihad*, RELIGIONS, Dec. 3, 2021, at 1, 1–5; *see also* Bismee Taskin, *1 Year of UP Anti-Conversion Law – 108 Cases, Chargesheet Filed in 72, ‘Lack of Proof’ in 11*, THEPRINT (Nov. 24, 2021, 8:00 AM), <https://theprint.in/india/1-year-of-up-anti-conversion-law-108-cases-chargesheet-filed-in-72-lack-of-proof-in-11/770763/>.

<sup>100</sup> BECKET FUND FOR RELIGIOUS LIBERTY, UNITED NATIONS HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW: INDIA 2 (2007) (emphasis added).

<sup>101</sup> AHMAD, *supra* note 92, at 4; Taskin, *supra* note 99.

At the international level, India is a party to the International Covenant for Civil and Political Rights.<sup>102</sup> Article 18 of the Covenant mandates:

1. Everyone shall have the right to freedom of thought, conscience and religion. *This right shall include freedom to have or to adopt a religion or belief of his choice*, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>103</sup>

Further, Article 27 states, “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”<sup>104</sup>

It is difficult to determine what counts as “forcible conversion” under these state-level laws. The text of the laws routinely include language to denote inducement; additionally, it could be read that anti-conversion laws do not include reconversion—that is, a return to one’s original or ancestral religion—in the definition of a conversion.<sup>105</sup> Further, there is a question as to whether a conversion, prompted by proselytization, is “forcible” or illegal under these laws.

### *E. Indian Supreme Court Precedent on Religious Expression and Anti-Conversion*

This question of when proselytization becomes “forcible conversion” was addressed by the Supreme Court of India in *Rev. Stainislaus v. State*

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<sup>102</sup> *Status of Ratification Interactive Dashboard: India*, UNITED NATIONS HUM. RTS.: OFF. OF THE HIGH COMM’R, <https://indicators.ohchr.org/> (select “India” from “Countries” column to left of interactive world map) (last visited Oct. 25, 2024).

<sup>103</sup> International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 999 U.N.T.S. 14668 (emphasis added).

<sup>104</sup> *Id.* art. 27.

<sup>105</sup> AHMAD, *supra* note 92, at 4. Presumably, you can force someone to return to their ancestral religion.

of *Madhya Pradesh*.<sup>106</sup> *Rev. Stainislaus* merged two cases which dealt with state-level anti-conversion and blasphemy laws from Madhya Pradesh and Orissa (now Odisha). Both laws prohibited conversion obtained via force—defined as “threat of divine displeasure or social excommunication.”<sup>107</sup> In Orissa, a member of the Catholic union was punished under Orissa law for expressing the Christian belief that those who do not accept Christ will go to hell after death.<sup>108</sup> At the state level, the court in Madhya Pradesh upheld the anti-conversion law, while Orissa’s high court struck down its anti-conversion law, writing that the law violates Article 25 of the Indian Constitution.<sup>109</sup> The contention of the court of Madhya Pradesh was that the existence of the anti-conversion laws protected the freedom of religion for all citizens, by limiting the way that a person can force another to change their religion.<sup>110</sup> By contrast, the high court of Orissa found that the Orissan state anti-conversion law included a nebulous definition of forcible conversion; many routine proselytization activities could have fallen under this definition, subjecting a missionary to criminal penalty.<sup>111</sup>

The Supreme Court of India, however, found that anti-conversion laws in both states were constitutional, writing that religious people do not have the right to “convert [an]other person to one’s own religion[,] but to transmit or spread one’s religion by an exposition of its tenets” alone.<sup>112</sup> In the Supreme Court’s own definition, the term “propagation” merely means dissemination, and does not include conversion. However, it is unclear how the Court would treat a conversion that happened as a direct result of dissemination. The Court in *Ratilal Panachand Gandhi v. The State of Bombay and Others*, wrote,

[E]very person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others . . . [t]he free exercise of religion by which is meant the performance of outward acts in pursuance of religious

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<sup>106</sup> *Rev. Stainislaus v. State of Madhya Pradesh & Ors*, (1977) 2 SCR 611, 616–17.

<sup>107</sup> V.P. Bharatiya, *Propagation of Religion: Stainislaus v. State of M.P.*, 19 J. INDIAN L. INST. 321, 326 (1977).

<sup>108</sup> *Id.*

<sup>109</sup> *Rev. Stainislaus*, 2 SCR at 611.

<sup>110</sup> *Id.* at 614.

<sup>111</sup> *Id.* at 615.

<sup>112</sup> *Id.* at 611.

belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people.<sup>113</sup>

In practice, however, mere “propagation” is still punished by the local authorities.<sup>114</sup> Given that Abrahamic religions believe in the threat of divine displeasure and express this belief to others when proselytizing, propagation of any religion that does not have a concept of universalism will inherently include a threat of divine displeasure.<sup>115</sup> Thus, the propagation of Abrahamic religions could always be argued to meet the definition of “forcible” conversion under these state laws.

### *F. Miscellaneous Laws with Application to Religious Minorities*

Even more so than mere anti-conversion laws and anti-blasphemy laws are the myriads of other laws which inherently work to persecute religious minorities. These laws include the Foreign Contribution Regulation Act,<sup>116</sup> which strongly regulates the participation of outside charities in the nation of India, as well as Article 48 of the Indian Constitution,<sup>117</sup> which bans cow slaughter under penalty of imprisonment;<sup>118</sup> the slaughter of cows is a fundamental practice for *Eid-ul-Adha*, the Islamic feast of sacrifice.<sup>119</sup> Additional laws as applied

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<sup>113</sup> *Ratilal Panachand Gandhi v. State of Bombay and Others* (1954) 1 SCR 1055, 1062–63.

<sup>114</sup> See generally OFF. OF INT’L RELIGIOUS FREEDOM, U.S. DEP’T OF STATE, 2023 INTERNATIONAL RELIGIOUS FREEDOM REPORT: INDIA (2023) (providing examples of official retaliation against minority religious groups for their standard religious practices, in the name of enforcing anti-conversion laws).

<sup>115</sup> Hell is a prevalent theme in nearly every major religion, including Hinduism. Carol Zaleski, *Hell*, ENCYC. BRITANNICA (Sept. 14, 2024), <https://www.britannica.com/topic/hell> (noting that Judaism, Christianity, Islam, Buddhism, and even Hinduism have themes of Hell and Purgatory, and particularly, that “the wish to avoid rebirth in hell is a powerful incentive to offer worship and perform selfless acts” for many Hindus). However, for Hindus, the threat of Hell stems from karma, and not from the threat of divine displeasure. *Id.*

<sup>116</sup> The Foreign Contribution (Regulation) Act, 2010.

<sup>117</sup> “The State shall . . . take steps for . . . prohibiting the slaughter, of cows and calves and other milch and draught cattle.” India Const. art. 48.

<sup>118</sup> Specifically, Article 48 authorizes Indian states to pass laws prohibiting the slaughter of cows. *E.g.*, The Punjab Prohibition of Cow Slaughter Act, 1955, §§ 3, 8(1).

<sup>119</sup> Monica Haider, *What This Holiday of Sacrifice Teaches Us About Mindfulness*, CNN (June 16, 2024, 10:41 PM), <https://www.cnn.com/2024/06/16/health/eid-al-adha-holiday-mindfulness/index.html>. Eid-ul-Adha celebrates the willingness of Abraham to sacrifice Ishmael after Allah commanded him. *Id.*



particularly to Muslims are the Armed Forces (Special Powers) Act of 1990,<sup>120</sup> and the Citizenship Amendment Act.<sup>121</sup>

### III. APPLICATION OF THE LAW TO THE PERSECUTION OF RELIGIOUS MINORITIES

There is a general sentiment, among Hindu nationalists, that they are the disadvantaged minority, and that the Constitution protects minorities at the expense of the religion and culture of ancient India. On defending anti-conversion laws, one Hindu nationalist wrote:

A genuine right protects the weak from the bully. It is absurd to give equal rights to the wolf and the sheep to eat one another. Likewise, giving an individual the freedom to make informed personal religious choice is entirely different from licensing institutionalised organised conversion activity, nay religious imperialism, to destroy indigenous Hinduism, Sikhism etc.<sup>122</sup>

This opinion editor, writing for *Swarajya Magazine*, just so happened to be M. Nageswara Rao, the interim director of the Indian Central Bureau of Investigation.<sup>123</sup>

The issue of conversion is of particular importance to Hindu nationalists. The caste system still bears effect in modern India, dictating a Hindu Indian's respective legal status regarding marriage, family law,

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<sup>120</sup> The Armed Forces (Jammu And Kashmir) Special Powers Act, 1990, § 3 (delegating to the governors of the states of Jammu and Kashmir the power to declare those areas to be “disturbed areas” subject to loosened legal protections for citizens against the Indian armed forces). The law has led to numerous human rights abuses against Muslims and other marginalized groups, including “extrajudicial killings, torture, rape, and ‘disappearances.’” *India: Repeal Armed Forces Special Powers Act*, HUM. RTS. WATCH (Aug. 18, 2008, 8:00 PM), <https://www.hrw.org/news/2008/08/18/india-repeal-armed-forces-special-powers-act>.

<sup>121</sup> The Citizenship (Amendment) Act, 2019 §§ 2, 6 (removing barriers to citizenship for followers of a variety of religious faiths and beliefs, but noticeably, not Muslims). These more subtle laws are beyond the scope of this paper, but nevertheless have a substantial impact on the practice of minority religions. For further reading, see generally IQTIDAR K. CHEEMA, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, CONSTITUTIONAL AND LEGAL CHALLENGES FACED BY RELIGIOUS MINORITIES IN INDIA, (2017).

<sup>122</sup> M. Nageswara Rao, *The Constitutional Subjugation of Hinduism: A Hindu Cry for Equal Rights*, SWARAJYA (Aug. 7, 2020, 12:25 PM), <https://swarajyamag.com/ideas/the-constitutional-subjugation-of-hinduism-a-hindu-cry-for-equal-rights>.

<sup>123</sup> *Id.*; see also Vasudha Venugopal, *M Nageswara Rao: New CBI Boss a Champion of ‘Hindu Causes’*, ECON. TIMES, <https://economictimes.indiatimes.com/news/politics-and-nation/m-nageswara-rao-new-cbi-boss-a-champion-of-hindu-causes/articleshow/66371553.cms> (Oct. 26, 2018, 11:44 AM) (describing M Nageswara Rao, the interim CBI chief, as a champion of Hindu cultural assertion).

guardianship, and inheritance.<sup>124</sup> However, the Constitution established independent legal standards for religious minorities in their handling of family law, inheritance, and adoption<sup>125</sup>—standards that *Dalits*, the former caste of Untouchables, may find less oppressive and restrictive than their legal status under Hindu caste.<sup>126</sup> Conversion can offer an Indian respite from the fatalistic shroud of caste.<sup>127</sup>

*A. Secular in Name Only: A Criticism of the Relevant Laws*

Understanding the state-level definitions of “forcible conversion” is instrumental to interpreting the current situation with respect to religious minorities in India. Since the definition of “forcible” can include the “threat of divine displeasure” or “social excommunication,”<sup>128</sup> ordinary proselytization and religious activities can expose a person to criminal penalty. Further, Article 25 of the Indian Constitution predicates religious freedom and freedom of expression as being “[s]ubject to public order, morality and health and to the other provisions.”<sup>129</sup> As the Supreme Court of India indicated in *Rev. Stainislaus v. State of Madhya Pradesh*, the purpose of anti-conversion and anti-blasphemy laws is to directly protect public order, morality, and health.<sup>130</sup> However, in reality, it is religious minorities who are most often found to be disturbing the Hindu public order.

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<sup>124</sup> See Zia Akhtar, *Scheduled Castes, Dalits and Criminalisation by ‘Descent’*, 9 STATE CRIME J. 71, 78 (2020).

<sup>125</sup> Rochana Bajpai, *Multiculturalism in India: An Exception?*, in MULTICULTURALISM IN THE BRITISH COMMONWEALTH 127, 130–31 (Richard T. Ashcroft & Mark Bevir eds., 2019).

<sup>126</sup> See *id.* at 131–32 (noting that the Untouchables declared themselves to be “political minorities” in an effort to rectify their historical exclusion from the government. They were later excluded from minority status and integrated into the broader Hindu community by a constitutional amendment.). Though beyond the scope of this Note, *de facto* discrimination against members of Scheduled Caste serves as further incentive for a Dalit to convert from Hinduism to a minority religion. See generally Akhtar, *supra* note 124.

<sup>127</sup> Dalit converts may still be broadly identifiable as Dalit because of their complexion and therefore may still face discrimination, even within their religious circles, but they may face less social discrimination, enjoy more religious rights, and achieve some level of upward social mobility. See Peter Lemieux, *India’s Christian Untouchables*, CNEWA: ONE MAG. (Nov. 2012), <https://cnewa.org/magazine/indias-christian-untouchables-33657/> (quoting Dr. Simon John, chairman of the Backward People Development Corporation). For a more detailed discussion of the specific development and adjudication of minority rights in India see generally Manoj Kumar Sinha, *Minority Rights: A Case Study of India*, 12 INT’L J. ON MINORITY & GRP. RTS. 355 (2005).

<sup>128</sup> *E.g.*, The Arunachal Pradesh Freedom of Religion Act, 1978, § 2(d).

<sup>129</sup> India Const. art. 25, cl. 1.

<sup>130</sup> *Rev. Stainislaus v. State of Madhya Pradesh & Ors.*, (1977) 2 SCR 611, 611, 615, 617–18.

These state-level anti-conversion laws, especially like those proposed in Chhattisgarh, which would require a conversion to be filed with the local magistrate,<sup>131</sup> clearly violate the ICCPR's Article 18, sections 1 and 2.<sup>132</sup> The state of Gujarat requires the magistrate to confirm or deny the individual's right to convert<sup>133</sup>; this requirement too, inherently violates Article 18. Though these laws may purport to restrict forcible conversion, the notice requirement applies to even *voluntary conversions*.<sup>134</sup>

These anti-conversion and anti-blaspemy laws are inherently flawed. The Indian Constitution guarantees a secular state, but the enactment of anti-conversion laws, by their nature, indicate that there is a religious status quo which is more valuable than one's right to freely adopt and change one's religion.<sup>135</sup> And despite the Constitution's guarantee of secularism, Article 25(2)(b), which provides that the Federal government shall advance and reform Hindu institutions for the benefits of Hindus,<sup>136</sup> is damning from the start. India is a secular state in name only, but Bharat is a Hindu nation.<sup>137</sup>

Though the ICCPR does caveat freedom of expression and practice of religion as being subject to public welfare and police powers, there has been no showing by any state government that the issue of religious conversions and blasphemy has risen to the level of a public emergency.<sup>138</sup> Thus, the reliance on nebulous ideas of public welfare is pretextual, a thin attempt to hide the true motivating factor: a contempt for minority religions.

### *B. Application of the Law to Christian Persecution*

With *Rev. Stainislaus*, the Supreme Court of India upheld the validity of Odisha and Madhya Pradesh's anti-conversion laws, and in 2023, Madhya Pradesh authorities arrested Christians on charges of

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<sup>131</sup> AHMAD, *supra* note 92, at 10. The BJP-controlled legislature attempted to pass this law in 2006 and is attempting to pass this law again in the current, 2024, legislative session. See Shanker Arnimesh, *60-Day Notice, DM Verification, Jail Threat in Chhattisgarh Conversion Bill — but Not for 'Ghar Wapsi'*, THEPRINT (Feb. 23, 2024, 8:48 AM), <https://theprint.in/politics/60-day-notice-dm-verification-jail-threat-in-chhattisgarh-conversion-bill-but-not-for-ghar-wapsi/1975167/>.

<sup>132</sup> *Infra* note 134.

<sup>133</sup> AHMAD, *supra* note 92, at 11.

<sup>134</sup> WILSON, *supra* note 95, at 2.

<sup>135</sup> S. Asia Hum. Rts. Documentation Ctr., *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, 43 ECON. & POL. WKLY. 63, 68 (2008).

<sup>136</sup> Pritam Singh, *Hindu Bias in India's 'Secular' Constitution: Probing Flaws in the Instruments of Governance*, 26 THIRD WORLD Q. 909, 911–12, 915–16 (2005).

<sup>137</sup> *Id.*

<sup>138</sup> See S. Asia Hum. Rts. Documentation Ctr., *supra* note 135, at 69.

allurement and held them without bail for over two months.<sup>139</sup> In addition to holding them without bail, police reportedly violated a Supreme Court order mandating that offenders be served with a notice and warning before their arrest.<sup>140</sup> A local Catholic leader was quoted by Union of Catholic Asian News as stating, “[i]f a Christian offers food to a hungry person who happens to be Hindu, it can be interpreted as allurement and the poor Christian can end up in jail.”<sup>141</sup> Adjusting for potential hyperbole, it is evident that Christians on the ground fear that even a showing of basic human dignity will subject them to charges of allurement and forcible conversion.

*Rev. Stainislaus* also gave credence to a slew of other state-level anti-conversion laws in the process, including a recently enacted “religious freedom law” in the state of Karnataka.<sup>142</sup> In late 2022, three people were arrested and charged in Bengaluru, Karnataka, for an alleged “attempted conversion.”<sup>143</sup> Bengaluru police claimed this attempted conversion was premeditated, disguised as a Christmas and New Year’s Day celebration.<sup>144</sup> The accused Christians claimed that they had said nothing regarding conversion, but had merely invited people into their home and mentioned their faith in Jesus Christ.<sup>145</sup>

Even before the passage of the anti-conversion law, Karnataka was a particular hotspot for anti-Christian activity. In 2021, a pastor was jailed for objecting to a Hindu protest that forced its way into his church and held religious demonstrations there.<sup>146</sup> He was charged under Indian Penal Code Article 295-A, discussed above, for “outraging” the feelings of

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<sup>139</sup> *Rev. Stainislaus v. State of Madhya Pradesh & Ors*, (1977) 2 SCR 611, 611, 616–17; *7 Indian Christians Get Bail in 'Conversion' Case*, UNION OF CATH. ASIAN NEWS (Sept. 7, 2023, 4:52 AM), <https://www.ucanews.com/news/7-indian-christians-get-bail-in-conversion-case/102522>.

<sup>140</sup> *7 Indian Christians Get Bail in 'Conversion' Case*, *supra* note 139.

<sup>141</sup> *Id.*

<sup>142</sup> *See Karnataka Legislative Council Passes Anti-Conversion Bill Amid Protest*, INDIAN EXPRESS, <https://indianexpress.com/article/cities/bangalore/karnataka-legislative-council-passes-anti-conversion-bill-8153628/> (Sept. 16, 2022) (reporting that the Karnataka legislature passed a bill called the “Karnataka Right to Freedom of Religion Bill,” which is essentially an anti-conversion bill).

<sup>143</sup> *Three Booked in B'luru for Alleged Bid to Convert People*, NEWSROOM ODISHA (Dec. 30, 2022), <https://newsroomodisha.com/three-booked-in-bluru-for-alleged-bid-to-convert-people/>.

<sup>144</sup> *See id.*

<sup>145</sup> *Id.*

<sup>146</sup> Imran Qureshi, *Indian Christians Fear Attacks or Jail over Conversions*, BBC (Dec. 20, 2021), <https://www.bbc.com/news/world-asia-india-59724425>.

a religious group.<sup>147</sup> After spending nearly two weeks in jail, he was released on bail with no explanation.<sup>148</sup>

Frequently, Indian Christians are reported to state and local authorities via anonymous tips.<sup>149</sup> The Indian Supreme Court issued a stay in early 2023, protecting Christians in Uttar Pradesh from “coercive action” from the local police in their enforcement of Uttar Pradesh’s anti-conversion law.<sup>150</sup> According to local news, a mob broke into a local church during a prayer service, locked the congregants inside, and held them there until police arrived to arrest them.<sup>151</sup> According to the Christians, police arrested children, as well as adults, on charges of forcible and mass conversion.<sup>152</sup> After the arrest, a First Information Report (“FIR”) <sup>153</sup> was filed for the church and its congregants; a second one was later filed, which caused some of the church members to go on the run, in order to avoid arrest.<sup>154</sup> The complainant of the original report against the church was none other than a commissioner of the committee that oversees the local FIR process.<sup>155</sup>

Uttar Pradesh is a current stronghold for the BJP party, and was the top Indian state for anti-Christian violence in 2022.<sup>156</sup> Further reports from 2023 detail the arrest of an entire church—including an 18-month-old baby—for reported “mass [] conversions” in the form of a private

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<sup>147</sup> *Id.*; see *supra* notes 85–89 and accompanying text.

<sup>148</sup> Qureshi, *supra* note 146.

<sup>149</sup> See, e.g., Akanksha Kumar, ‘After Muslims, It’s the Turn of Christians:’ With Little Evidence, UP Govt Prosecutes 4 Christian Institutions, Arrests Employee, ARTICLE 14 (Feb. 28, 2024), <https://article-14.com/post/-after-muslims-it-s-the-turn-of-christians-with-little-evidence-up-govt-prosecutes-4-christian-institutions-arrests-employees-65de9daea40dc>.

<sup>150</sup> *Supreme Court Protects Members of Christian Community from Coercive Action by U.P. Police Under Anti-Conversion Law*, THE HINDU (Mar. 25, 2023, 12:27 AM), <https://www.thehindu.com/news/national/supreme-court-protects-members-of-christian-community-from-coercive-action-by-up-police-under-anti-conversion-law/article66656998.ece>.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> A “First Information Report” is a type of police report in India. *How to File a Police FIR/Complaint Online*, NAT’L COMM’N FOR SCHEDULED CASTES, <https://ncsc.nic.in/pages/display/135-how-to-file-a-police-fir-complaint-online#> (Sept. 26, 2024).

<sup>154</sup> *Supreme Court Protects Members of Christian Community from Coercive Action by U.P. Police Under Anti-Conversion Law*, *supra* note 150.

<sup>155</sup> *Id.*

<sup>156</sup> Tamil Nadu, *Hate Crimes Against Christians Peak in 2022: Karnataka, TN Highest in South Says Report*, NEWS MINUTE (Nov. 26, 2022, 8:05 AM), <https://www.thenewsminute.com/tamil-nadu/hate-crimes-against-christians-peak-2022-karnataka-tn-highest-south-says-report-170336>; Sumit Ganguly, *How the BJP Won Again in Uttar Pradesh*, FOREIGN POLICY (Mar. 16, 2022, 2:04 PM), <https://foreignpolicy.com/2022/03/16/india-uttar-pradesh-elections-bjp-modi/>.

prayer service.<sup>157</sup> Despite Uttar Pradesh's anti-conversion law giving only relatives the standing to report the conversion of their family members, the complainant identified himself as a Hindu nationalist from the All India Warriors Forum, who claims to have overheard the church offering compensation for conversions.<sup>158</sup> With only hearsay evidence, the authorities still charged ten church members with forcible conversion.<sup>159</sup>

These anecdotes are mere drops in the ocean. The United Christian Forum of New Delhi published a release to the Supreme Court and the Indian Prime Minister, reporting 520 arrests of Christians from January to September of 2023 alone.<sup>160</sup> In 2014, the first year of Modi's administration, the reported number was 147.<sup>161</sup>

### *C. Application of the Law to Muslim Persecution*

In addition to the effects of the anti-blasphemy and anti-conversion laws, Muslim Indians face their own unique abuses under Hindu nationalism. The clearest abrogation of the Constitutional rights and privileges given to Muslim Indians comes in the form of the repeal of Article 370 of the Indian Constitution, which granted an autonomous status to the Muslim-majority states of Jammu and Kashmir.<sup>162</sup> The Constitution of 1949 guaranteed Jammu and Kashmir the right to independently determine policy such as property and family rights, as well as permanent residence in the region.<sup>163</sup> In pursuit of stability in the region, following the revocation of the autonomous status, the Indian authorities invoked the Armed Forces (Special Powers) Act of 1990, which allowed for lower standards of criminal procedure in the "disturbed areas in the State of Jammu and Kashmir."<sup>164</sup> The Act allowed the Indian authorities to suspend the region's internet access over eighty times in

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<sup>157</sup> *Indian Court Remands 5 Christians on Conversion Charges*, UNION CATH. ASIAN NEWS (Apr. 25, 2023, 6:44 AM), <https://www.ucanews.com/news/indian-court-remands-5-christians-on-conversion-charges/101101>.

<sup>158</sup> *Id.*; The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, § 4 (2020).

<sup>159</sup> *See Indian Court Remands 5 Christians on Conversion Charges*, *supra* note 157.

<sup>160</sup> Sarah Thanawala, *United Christian Forum Details the Worrying Increase in Incidents of Violence Against Christians in India*, THE LEAFLET (Sep. 7, 2023), <https://theleaflet.in/united-christian-forum-details-the-worrying-increase-in-incidents-of-violence-against-christians-in-india/>.

<sup>161</sup> *Id.*; Max Fisher, *Everything You Need to Know About Narendra Modi's 2014 Rise*, VOX (May 14, 2015, 12:22 PM), <https://www.vox.com/2015/5/14/18094076/narendra-modi>.

<sup>162</sup> *In re: Article 370 of the Constitution*, (2019) 1099 SCR 1, 113; *Article 370: What Happened with Kashmir and Why It Matters*, BBC (Aug. 5, 2019), <https://www.bbc.com/news/world-asia-india-49234708>.

<sup>163</sup> India Const. art. 370, cl. 1(a)–(b).

<sup>164</sup> The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, §§ 3–4.

2022, impose stifling restrictions on freedom of movement, and perpetuate human rights abuses in Jammu and Kashmir.<sup>165</sup> Essentially, Muslims in Jammu and Kashmir live under the sanction of Indian martial law. The law has faced substantial condemnation from international non-governmental organizations and from the United Nations, yet it has never been repealed by the Indian government.<sup>166</sup> And it should come as no surprise that the Indian government has never agreed to waive its sovereignty for prosecution or litigation of abuses done under color of the Act.<sup>167</sup>

Simultaneous to the revocation, the Modi Administration passed the Citizenship Amendment Act, which provided a route to amnesty for non-Muslim illegal immigrants from Afghanistan, Pakistan, and Bangladesh.<sup>168</sup> Prior to the Amendment, there was no right of an illegal migrant to obtain citizenship.<sup>169</sup> Under the Amendment, Muslims do not have access to a path to citizenship if they are found to either have been in the country illegally or to have overstayed their visas.<sup>170</sup> Protests over this Act left fifty people dead in New Delhi, the large majority of them Muslim Indians.<sup>171</sup>

Additionally, Muslims are particular targets of vigilante violence against those who practice cow slaughter and consumption. One notable incident took place in 2015, in Haryana, where Hindu nationalists lynched a fifty-year-old man and seriously injured his son, on suspicions that the family had been consuming beef in the privacy of their home.<sup>172</sup> The Chief Minister of Haryana claimed that the attack was the result of “misunderstandings” and that both sides had committed grievous wrongs—the wrong of the victims was that of supposedly consuming

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<sup>165</sup> *India: Basic Freedoms at Risk in Kashmir*, HUM. RTS. WATCH (Aug. 6, 2019, 10:35 PM), <https://www.hrw.org/news/2019/08/06/india-basic-freedoms-risk-kashmir>; *No Internet Means No Work, No Pay, No Food*, HUM. RTS. WATCH (June 14, 2023), <https://www.hrw.org/report/2023/06/14/no-internet-means-no-work-no-pay-no-food/internet-shutdowns-deny-access-basic>.

<sup>166</sup> *India: Basic Freedoms at Risk in Kashmir*, *supra* note 165.

<sup>167</sup> *Id.*

<sup>168</sup> The Citizenship Amendment Act, 2019, § 2; John Curtis et al., *Persecution of Christians and Religious Minorities in India*, HOUSE COMMONS LIBR. (Feb. 22, 2022).

<sup>169</sup> The Citizenship Act, 1955, § 3(c)(ii), 5, 6.

<sup>170</sup> The Citizenship Amendment Act, 2019, § 2, 6; *see also* *Citizenship Amendment Act: Court Refuses to Put Controversial Law on Hold*, BBC (Jan. 20, 2020, 2:30 PM), <https://www.bbc.com/news/world-asia-india-51203104> (elaborating on the Act’s religious persecution of Muslims).

<sup>171</sup> Lindsay Maizland, *India’s Muslims: An Increasingly Marginalized Population*, COUNCIL ON FOREIGN REL. (Mar. 18, 2024, 1:10 PM), <https://www.cfr.org/backgrounder/india-muslims-marginalized-population-bjp-modi>.

<sup>172</sup> *India BJP Leader Says Muslims Should Stop Eating Beef*, BBC (Oct. 16, 2015), <https://www.bbc.com/news/world-asia-india-34546960>.

cows.<sup>173</sup> In a famous statement, the Minister said, “[m]uslims can continue to live in this country, but they will have to give up eating beef . . . the cow is an article of faith here.”<sup>174</sup> It bears mentioning that prior to Modi’s regime, cow slaughter was not illegal, and these “sacred” cattle were often regarded not dissimilarly to a standard farm pest.<sup>175</sup> Under Hindu nationalism, even a street animal can become a conduit for interfaith violence.

## CONCLUSION

India has made murmurings of changing its official, international name to Bharat, claiming it will follow in the footsteps of other countries such as Czechia and Türkiye.<sup>176</sup> While Modi’s regime indicates that this is India’s attempt to reverse the legacy of British colonialism,<sup>177</sup> there is no doubt that the name also harkens back to an ancient era when Hinduism flourished in the subcontinent. India as “Bharat” is another thinly veiled Hindu nationalist ideal, aimed at bringing back the supposed glory days of a religiously homogenous land.

Hindu nationalism posits that Hindus are the real children of Bharat, with claim and title to the land in which they live. Modi’s Hindu nationalism in India is more than mere domestic politics—it is a movement of spiritual significance, seeking to return the world to how it was before the invaders polluted the landscape. While the concept of ritual purity in ancient Aryan Brahmanism has largely distilled itself into Hindu caste sentiments, there is still the very visceral sense of the same purity standards today. There is a nationalist sentiment that the minority religions of India are spiritually profane to the nation; that these foreign forces are disproportionately rewarded under *our* Constitution of Bharat.

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<sup>173</sup> *Id.*

<sup>174</sup> Varinder Bhatia & Nirupama Subramanian, *Muslims Can Live in this Country, But Will Have to Give Up Eating Beef, Says Haryana CM Manohar Lal Khattar*, INDIAN EXPRESS (Oct. 16, 2015), <https://indianexpress.com/article/india/india-news-india/muslims-can-live-in-this-country-but-they-will-have-to-give-up-eating-beef-says-haryana-cm-manohar-lal-khattar/>.

<sup>175</sup> Nathelene Reynolds, *Hindu Nationalism and the Muslim Minority in India*, in CORRIDORS OF KNOWLEDGE FOR PEACE AND DEVELOPMENT 298 (Sarah S. Aneel et al. eds., 2020).

<sup>176</sup> Sheikh Saaliq, *Why India’s Government Wants to Change the Country’s Name to ‘Bharat’*, AP NEWS (Sep. 5, 2023, 8:28 AM), <https://apnews.com/article/india-sanskrit-name-bharat-modi-g20-72782ba81aa67dcf7e197a98fec9b5f5>; Tim Marshall, *First Türkiye, Next India? The Curious Process of Changing the Name of a Country*, THE TELEGRAPH (Dec. 16, 2023, 9:30 PM), <https://www.telegraph.co.uk/travel/destinations/india-turkiye-czechia-changing-names-of-countries/>.

<sup>177</sup> Sheikh Saaliq, *supra* note 176.



Yet history is a Hindu nationalist's greatest *Achilles heel*. Religious minorities have been an integral part of Indian history, and the Indian subcontinent is valued as holy land in some sects of Islam and certain branches of eastern Christianity. Even if these religious minorities were not a distinct part of Indian history, international law mandates their protection as equal citizens under Indian law.

The Essentials of Hindutva, for all its scathing dismissal of religious minorities, contains a contradictory statement. In asking oneself who is Indian, and who bears "a common blood," Savarkar writes the following: "[t]herefore, all those who love the land that stretches from Sindhu to Sindhu, from the Indus to the Seas, as their fatherland consequently claim to inherent the blood of the race that has evolved . . . ." <sup>178</sup>

Savarkar goes on to say that whether by adaptation or incorporation, *those who love the land* attain an attribute of Hindutva—that is, they are truly the blood of the Indian soil. <sup>179</sup> Inherently, Hindu nationalism seeks to criminalize those who love the land of India, but love it with the love of different gods.

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<sup>178</sup> SAVARKAR, *supra* note 22, at 90–91.

<sup>179</sup> *Id.* at 100–02.

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