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# The Contemporary Moment of Indian democracy

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**Hilal Ahmed** is Associate Professor at the Centre for the Study of Developing Societies. He works on political Islam, Muslim politics of representation, and politics of symbols in South Asia. His first book, *Muslim political discourse in postcolonial India: Monuments, Memory, Contestation* (Routledge, 2014), explores these thematic concerns to develop an interdisciplinary approach to the study of Muslim politics. His recent works, *Siyasi Muslims: A Story of Political Islams in India* (Penguin-Random House [New Delhi], 2019) and *Democratic Accommodations: Minorities in Contemporary India* (with Peter R. deSouza and Sanjeer Alam; Bloomsbury, 2019) further elaborate these themes and make a modest attempt to explain the discursively constituted contemporary Muslim political discourse in India.

## ABSTRACT

The standard descriptions of contemporary politics do not capture the complex nature of Indian democracy. Although the abrogation of the Article 370 and the Citizenship Amendment Act (CAA) 2019 certainly underline the fragility of Indian democracy in a broader sense, there is a need to closely analyze the manner in which these structural changes are executed. The *political essentialism* poses another kind of problem. The established political binary between the Hindutva and the liberals has created the impression that these are the only two possible interpretations of the political-structural changes introduced by the Modi government. The liberals, for instance, tend to establish a direct and undifferentiated link between Art 370/CAA and the old Hindutva argument that India must be declared a Hindu nation (*Hindu Rashtra*). Many anti-CAA commentators claim that CAA is a direct attack on the idea of secular citizenship. While there is a merit in this line of reasoning, the portrayal of Hindutva as an anti-constitutional form of politics is rather misleading.

The contemporary Hindutva, this paper suggests, does not adhere to the old Hindu nationalist rhetorical ideals such as *Dharam Rajya* (rule of principles) *Hindu Rashtra* (Hindu nation) or even *Akhand Bharta* (undivided/ unbroken India). On the contrary, it aims to appropriate the Constitution for creating a new Hindu majoritarian common sense. In this backdrop, the paper asks two fundamental questions. First, what is nature of this new form of *Hindutva constitutionalism*? And second, how does this *Hindu constitutionalism* contribute to the emerging hegemony of Indian politics?

## Keywords:

*Democracy, Politics, Hegemony, Hindutva, Citizenship, Constitution, Constitutionalism, State, Nation, Nationalism, People*

# The Contemporary Moment of Indian democracy

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## Introduction

The *Bharatiya Janata Party's* (BJP) impressive victory in the 2019 elections encouraged the Modi government to introduce two significant laws in the Parliament. The government revoked the special status of the state of Jammu and Kashmir in August 2019. The state was eventually divided into two administrative units—Jammu and Kashmir and Laddakh—as union territories. The Citizenship Amendment Act 2019 (CAA) was the second important initiative. This law offers citizenship to non-Muslim religious communities of three Muslim majority states—Pakistan, Bangladesh and Afghanistan.

These political-structural changes are seen as decisive factors to assess the state of democracy in India. The BJP and the organizations/ groups committed to the ideology of *Hindutva* celebrate these changes in the name of majoritarian nationalism. They claim that the revocation of the Article 370 of the Constitution would give more powers to the central government to control terrorism and pave the way for the mainstreaming of the people of Kashmir. A similar moral-nationalist justification is given in support of the CAA. It is argued that the non-Muslim religious minorities face discrimination and religious persecution in neighboring Muslim countries. The CAA, thus, provides

citizenship to these persecuted religious groups on humanitarian grounds.

The *liberal-constitutionalists*, on the other hand, evoke the spirit of Indian Constitution to oppose these moves.<sup>1</sup> The dissolution of the state of Jammu and Kashmir—the only Muslim majority state in India—is seen as a political violation of the established norms and principles of Indian federalism. They also find the strategic use of religion as a legal category for defining citizenship unacceptable. For them identifying non-Muslim communities of Muslim majority states for providing Indian citizenship simply goes against Indian secularism; hence, CAA is inextricably linked to the anti-Muslim Hindutva politics of the BJP.

These standard descriptions of contemporary politics do not capture the complex nature of Indian democracy. Although the abrogation of the Article 370 and the CAA certainly underline the fragility of Indian democracy in a broader sense, one must closely analyze the manner in which these structural changes are executed. The CAA, for example, was drafted by the Ministry of Law and scrutinized by the law departments of the government at various stages. It would be completely incorrect to think that these legal experts did not discuss the constitutional validity of this law. The eagerness of the BJP to pass this law in 2019 underlines the fact that the government was fully confident about the legal technicalities associated with the CAA. These legal technical justifications seem to contribute directly to the political arguments of the party leaders.

The *political essentialism* poses another kind of problem. The established political binary between the Hindutva and the liberals has created the impression that these are the only two possible interpretations of the political-structural changes introduced by the Modi government. The liberals, for instance, tend to establish a direct and undifferentiated link between Art 370/CAA and the old Hindutva argument that India must be declared a Hindu nation (*Hindu Rashtra*). Many anti-CAA commentators claim that CAA is a direct attack on the idea of secular citizenship. While there is a merit in this line of reasoning, the portrayal of Hindutva as an anti-constitutional form of politics is rather misleading.

The contemporary Hindutva does not adhere to the old Hindu nationalist rhetorical ideals such as *Dharam Rajya* (rule of principles) *Hindu Rashtra* (Hindu nation) or even *Akhand Bharta* (undivided/ unbroken India). On the contrary, it aims to appropriate the Constitution for creating a new Hindu majoritarian com-

mon sense. In this backdrop, one must look at two fundamental questions. First, what is nature of this new form of *Hindutva* constitutionalism? And second, how does this *Hindu constitutionalism* contribute to the emerging hegemony of Indian politics? This exploration, I suggest, might help in making sense of the complexities associated with the contemporary moment of democracy.<sup>2</sup>

### What is Hindutva constitutionalism?

The term *constitutionalism*, broadly speaking, refers to the norms and principles that not only create legislative, executive and judicial powers but also impose certain limits and curbs on them. In this sense, constitutionalism is the theory and practice of procedural and substantive curbs that determine the legal validity of state's actions. This abstract formulation, however, cannot be understood unless the nature of these constraints in a given concrete case is systematically analyzed (Palshikar, 2008, p. 212). This makes the idea of *Indian constitutionalism* very significant.<sup>3</sup>

The centrality of the people/citizens in the overall schema of Indian Constitution and the expected role of the state to *intervene* in realm of the society for wider social transformation may be identified as two essential aspects of Indian constitutionalism.<sup>4</sup> The Constitution, theoretically, directs the state to follow certain principles to act as an instrumental entity. At the same, it envisages the state as a democratically elected mechanism that represents the *will of the people*. The long debate on the relevance of the Directive Principles of State Policy characterizes this inherent tendency of Indian constitutionalism.<sup>5</sup> In any case, the expectations that the state would maintain a balance between democratic impulse and social action make the realm of *politics* very significant.<sup>6</sup>

The success of the first general election in 1952 was a defining moment that transformed the abstract idea of Indian constitutionalism into a source of politics.<sup>7</sup> The ideologically divided political class somehow accepted the Constitution as the fundamental reference point to participate in the formal electoral politics.<sup>8</sup> Yet, there was a strong apprehensive about the success of the Constitution in the Indian context. Jay Prakash Narayan's famous book *A Plea for the Reconstruction of the Indian Polity* (1959) is an example of this political anxiety.<sup>9</sup> This led to an interesting ideological churning.<sup>10</sup> The political parties relied heavily on the language of constitutionalism in the realm of electoral politics. On the other hand, they continued to evolve different ideo-

logically suitable interpretations of the Indian Constitution. This intellectual engagement with the Constitution actually paved way for various kinds of ideologically oriented and *politically* feasible constitutionalism. The *Hindutva constitutionalism*, as we shall see, is one such political form.

The Rashtriya Swayamsewak Sangh (RSS) was very critical of the symbols of the newly created Republic of India, especially its Constitution. *The Organizer*, RSS's journal, made an interesting observation in its editorial of 30 November 1949:

....But in our constitution there is no mention of the unique constitutional development in ancient Bharat. Manu's Laws were written long before Lycurgus of Sparta or Solon of Persia. To this day his laws as enunciated in the Manusmriti excite the admiration of the world and elicit spontaneous obedience and conformity. But to our constitutional pundits that means nothing (cf. Islam, 2017, p. 7)<sup>11</sup>

The Bhartiya Jan Sangh (BJS), on the other hand, proposed a sophisticated critique of the secular constitution. The party manifesto of 1951 called upon the voters to establish a 'Dharamrajya based on Rule of law' for the revival of *Bharatiya* culture and revitalization of true *Bharatiya* nationalism'. (BJS Party Documents, 1951-1972, Vol. 1, p. 49). In this context, the Hindu nationalist organizations—Hindu Mahasabha, RSS and BJS —reinvented the idea of Hindu citizenship in the 1950s.<sup>12</sup> These groups were keen to appropriate the post-partition trauma of Hindu and Sikh refugees. The citizenship of Hindus of Pakistan, in this sense, was an important point of reference to question the legitimacy of secular constitution in the country. This broad ideological framework was also invoked to take a clear and overtly Hindu nationalist stance on Kashmir. These groups opposed the Article 370 and asserted that India should have a unitary form of government.<sup>13</sup>

The BJS manifesto (1957), for instance, demanded that there should be no visa restrictions for the Hindus migrating from Pakistan.<sup>14</sup> The party also reiterated its demand that Hindu Pakistanis must be given Indian citizenship.<sup>15</sup> In a way, the party remained critical of the constitutional schema of citizenship and argued firmly in favour of a radical legal restructuring of it. However, the BJS took a very different position on Kashmir issue.<sup>16</sup> It invoked the Constitution to welcome the accession of Kashmir in India. A resolution of the party noted: '...for the future security and safety of Jammu and Kashmir... it is essential that it should be *brought fully under the Constitution...* by repealing Article 370' (Emphasis added. BJS, Party Documents 1951-1972, p. 92)

If we closely look at these early Hindu nationalist claims, three broad inferences can be drawn. First, the Hindu nationalist organization invoked the language of minority/majority to justify the use of religious categories, Hindus and Muslims. This Hindu/Muslim binary helped them to defend their political imagination of *Hindu India* and *Muslim Pakistan*. Second, a clear distinction was made between Muslims and non-Muslims migrants. The Muslim migrants were designated as *Pakistani infiltrators*; while the Hindus and Sikhs were addressed as *refugees*. This distinction actually underscores the Hindu nationalist argument that India is a natural homeland for Hindus (Parveen, forthcoming). Third, the plight of Hindus in Pakistan was used strategically to target Muslims of India. RSS resolution of 1964 is a good example. It says:

...happenings since Partition have proved that non-Muslims cannot live with honour and security in Pakistan.... Obviously, the Government and the people of Bharat cannot remain oblivious of their duty of providing relief and rehabilitation for this suffering humanity... To this end it is imperative that ... our Government should be prepared for police action as suggested by the then Deputy Prime Minister Shri Sardar Patel in 1950 (2) stern measures as suggested by Home Minister...to expel 25 lakhs of Pakistani infiltrators in our country ...and (3) strong measures be taken against Pakistani fifth-column and their spies in the country. (RSS Resolution, 1964 <http://www.archivesofrss.org/Resolutions.aspx> accessed on 19 May 2020)

Indian Muslims were called the Pakistani spies or the *fifth column*. The constitutionally granted minority rights, Article 370 and secular citizenship status of Muslims in India were often described as institutional appeasement. This *Muslim appeasement* thesis was used to question the credibility of Indian secularism and to express an implicit critique of the Constitution.<sup>17</sup>

One may argue that the revocation of Article 370 and the CAA are the logical outcomes of these Hindu nationalist assertions; and therefore, it is sensible to view them as an organized attempt to establish a Hindu nation in India. This simplified reading of the Hindu nationalist narrative is misleading. The Hindu nationalist forces reinvented a unified idea of *Hindutva* as a refined political project in 1990s, which has been successfully accommodated in the realm of competitive electoral democracy. The BJP did not use the rhetoric of the *Hindu Rashtra* or pseudo-secularism to oppose the secular character of the Constitution in the late 1990s. Instead, it demanded a *comprehensive review* of the working of the Constitution. In its 1999 manifesto the party promised to 'appoint a Commission to review the Constitution... in the light of experiences and developments ... of the entire post-Independence peri-



od’ (<http://library.bjp.org/jspui/bitstream/123456789/242/1/BJP%20ELECTION%20MANIFESTO%201999.pdf> accessed on 19 May 2020). This led to the formation of the National Commission to review the working of the Constitution (NCRWC), also known as Justice Venkatachaliah Commission. The NCRWC submitted its detailed technical report in 2003 (<http://legalaffairs.gov.in/sites/default/files/chapter%2011.pdf> accessed on 19 May 2020). Interestingly, the BJP did not show any interest in this report and ignored it completely.

It is worth noting that RSS, and for that matter BJS/BJP, were not very comfortable with the term *Hindutva* to describe their political ideology before the Ram temple- Babri Masjid issue. The term *Hindutva* was always associated with V D Savarkar and his organization, the Hindu Mahasabha.<sup>18</sup> It was only after the famous *Hindutva* judgment of the Supreme Court in 1997, when the BJP formally accepted *Hindutva* as its philosophy.<sup>19</sup> These ideological ambiguities around the term *Hindutva* were finally resolved by Mohan Bhagwat in 2018, when he delivered three lectures on RSS’s version of *Hindutva*.

Bhagwat described RSS as an open, flexible and change-oriented network. He offered new meanings to the term *Hindutva* from RSS’s point of view and even went on to reject some of the formulations of M S Golwalkar—one of the most respected ideologues of the RSS. These lectures are an important source to understand at least three aspects of the recent CAA/370 related controversies: *meanings of citizenship, the imagination of a Hindu nation and the status of the Constitution* in contemporary India.

Bhagwat does not invoke the idea of citizenship; nor does he raise the Art 370 issue in a formal sense. Instead, he makes a few observations about the core values of *Hindutva*. He says:

... According to us, *Hindutva* has three basics: patriotism, glory of our ancestors and respect for culture... The collective notion of values belonging to the religions (*sampradaya*) that are sprung from the entirety, that is India, is known as *Hindutva*. ... This is the mark of India. And, India belongs to that. (<http://rss.org//Encyc/2018/9/18/Bharat-of-Future-An-RSS-perspective.html> accessed on 19 May 2020)

Bhagwat seems to upgrade the *punyabhumi* argument of V D Savarkar, who invokes a crucial distinction between a few religions as *originally Indian* and alien religions such as Islam and Christianity. Unlike Savarkar, Bhagwat remains kind towards Muslims. He asserted that there would be no *Hindutva* without Muslims!<sup>20</sup>

It is important to clarify that Bhagwat does not make this comment to appease Muslims. On the contrary, his objective is to cherish *Hindutva* openness and generosity. He seems to suggest that Muslims enjoy political equality in India despite the fact that their religion did not originate here. This *Hindutva generosity* argument must be seen in relation to a resolution passed by the RSS in 2013 about ‘persecuted Hindu, Sikh and Buddhists minorities’ of Pakistan and Bangladesh. This resolution calls upon the Indian government to provide citizenship to these groups. It says:

The government cannot shy away stating that it is an internal matter of the respective governments. ... In Bharat every Constitutional measure was invoked to accord not only protection and security but also many special provisions amounting to appeasement in favour of the so-called minorities. They are well-placed in our country today in terms of their demographic, economic, educational and social status... the Hindus of Bangladesh and Pakistan have been subjected to continuous persecution (<http://www.archivesofrss.org/Resolutions.aspx> accessed on 19 May 2020)

This new *Hindutva* conceptualization of core Indian values, original religions/communities and its imagination of persecuted minorities, especially of Hindus under Muslim rule appear to be the ideological sources, which are given a legal interpretation in the CAA.

In order to justify this revised version of *Hindutva*, Bhagwat makes a crucial distinction between state and nation. He rejects the western idea of nation-state because it empowers the political entity called the state over the cultural identity, which is *nation*. In his opinion, nation-state framework is not applicable in the Indian context for historical reasons. There have been various kinds of states in India; but this political diversity could not have any impact on India’s national identity in cultural terms. Realization of this intrinsic Indian cultural identity, according to Bhagwat, is *Hindutva* (<http://rss.org//Encyc/2018/9/18/Bharat-of-Future-An-RSS-perspective.html> accessed on 19 May 2020). This formulation, in a much broader sense, evokes the nation as a timeless entity. Bhagwat seems to call upon the Indian society to reclaim this eternal nationhood to recognize its historical existence. Interestingly, the Indian society, and for that matter Indian nationhood, is defined strictly in Hindu term. The exclusion of Indian Muslims and Christians, in this case, makes Bhagwat’s state/nation distinction very distinctive. This conceptualization helps the *Hindutva* forces to argue that Hindus living anywhere in the world, (especially in Pakistan and Bangladesh!) are

an inseparable part of the Hindutva nation on cultural basis. Therefore, they have an unquestionable religion-cultural right on Indian land.

Bhagwat's take on the Constitution is the most fascinating aspect of contemporary Hindutva. He strongly argues that RSS is not interested in changing the constitutional structure of the country. Instead, he emphasizes the need to evolve a national consensus in favor of his interpretation of Hindutva.<sup>21</sup> He envisages the Constitution as a tool and a mechanism to achieve a new national consensus through a legal process. He even went on to say that there was a need to have common consensus to repeal Article 370.

This evocation of the Constitution is not at all surprising. Narendra Modi as the PM candidate of the BJP began his election campaign with a bold declaration that Constitution is a 'holy book' and the only code of conduct of the government should be 'SabkaSaath, SabkaVikas'. (<https://www.narendramodi.in/sabka-saath-sabkavikas-collective-efforts-inclusive-growth-31590> accessed on 19 May 2020) This fascination for the Constitution as a 'sacred doctrine' continued even after the impressive electoral victory in the 2014 election. In October 2015 the government declared that 26 November, the day when the Constituent Assembly adopted the final draft of the Constitution in 1949, would be celebrated as the *Samvidhan Divas* every year. In a speech dedicated to the greatness of the Constitution, Modi went on to say that 'if there is any creation made by man, which is immortal, it's India's Constitution'. (<https://www.narendramodi.in/excerpts-of-pm-s-address-at-the-vaedictory-function-of-national-law-day-2017--537951> accessed on 19 May 2020).

This discussion underlines three basic features of *Hindutva constitutionalism*. First, there is a strong reliability on legal technicalities to articulate political positions. Unlike the Hindu nationalist arguments of 1950s, which used the terms like Hindus/Muslims and minority/majority interchangeably, the Hindutva constitutionalism employs a more sophisticated legal language that enables it to claim an *inclusive* character. The CAA, for example, is not exclusively about the migrating Hindus. It covers the non-Muslim religious minorities of the neighbouring Muslim states, *including Hindus*.

Emphasis on a refined and more profound idea of minority—not majority—is the second feature of Hindutva constitutionalism.<sup>22</sup> In the last six years the

BJP government has tried to appropriate the idea of minority to legitimize its *Hindu victimhood* argument.<sup>23</sup> A Public Interest Litigation (PIL) filed in the Supreme Court in 2017 by a BJP leader demanded that Hindus must be declared a minority in nine states (Lakshadweep, Mizoram, Nagaland, Meghalaya, Jammu and Kashmir, Arunachal Pradesh, Manipur and Punjab). It was argued that the minority rights of Hindus are 'being siphoned off illegally and arbitrarily to the majority population because neither Central nor the State Governments have notified them (Sic) Hindus as a 'minority' in these states (<https://www.livelaw.in/pil-sc-granting-minority-status-hindus-8-states-read-petition/> accessed on 19 May 2020). The CAA, in this sense, extends the scope of this kind of legal argument.

**Table 1: Hindu nationalism to Hindutva constitutionalism**

	Hindu nationalist position 1950–1990	Hindutva Constitutionalism
Citizenship	Hindus have a natural right to claim Indian citizenship (1950s)	Non-Muslim persecuted minorities (including Hindus) of three neighbouring Muslim majority states must be given citizenship on technical ground. (2019)
Indian Constitution	<b>Replaced/amended:</b> It should be replaced by <i>Dharm Rajya</i> (1952) <b>Revised:</b> It should be revised thoroughly (1999) to evaluate its working	<b>Revere it:</b> The Constitution should be treated a holy book (2014).
Article 370	It is a symbol of appeasement; it goes against the spirit of national integration.	+ It was an impermanent, temporary provision that was added to the constitution for political purposes. + It is needed to achieve one-nation one Constitution framework.
Hindu nation and Muslims	There is a need to <i>Indianize</i> Islam and nationalise Muslims.	Indian Muslims enjoy equal rights as minority; hence, offering citizenship to non-Muslim persecuted minorities of Muslim states is legitimate and justifiable.

Source: Author.

Finally, the Hindutva constitutionalism recognizes *one nation-one Constitution* as the foundational principle of its politics. Instead of relying entirely



on the old Hindu nationalist claims that Kashmir—a Muslim majority state—should not have any special status, the Hindutva groups propose a refined legal explanation. It is asserted that while the other provisions of the Constitution are fixed, permanent and consistent, the Article 370 is an unwanted and useless addition to it that has been kept for obvious political reasons by the Congress. The political determination of BJP and the strong will of Modi-Shah, according to this line of reasoning, have been instrumental in achieving the *one nation-one Constitution* framework.<sup>24</sup> It is worth noting that the Presidential order that revoked the special status of Kashmir is called the *Constitution (Application to Jammu and Kashmir) Order*, 2019.

### **Hindutva constitutionalism: legal technicalities and political arguments**

In order to understand the complex nature of the *politics* of Hindutva constitutionalism, let us look at the ways in which legal technicalities are employed for strengthening political arguments. For the sake of our discussion, I discuss four controversial issues associated with the CAA, 2019. I examine the *Report of the Joint Parliamentary Committee on the Citizenship Amendment Bill 2016* (JPC, 2019) as relevant source in this regard.

The selection of three Muslim majority countries to identify the persecuted non-Muslim minorities is the first critical question. The CAA is primarily concerned with Pakistan, Bangladesh and Afghanistan. The inclusion of Afghanistan in this list looks quite strange. Pakistan and Bangladesh were the outcome of two partitions of the subcontinents—1947 and 1971—which led to massive migration of population. These countries also share borders with India, which makes the question of illegal immigration politically relevant. However, the case of Afghanistan is different. Unlike other two states, it does not have any direct political-historical continuity with the Indian republic.

Although the MHA (the Ministry of Home Affairs) does not spell out its legal criterion for selecting three specific cases, the official response revolves around the idea of *religious persecution of religious minorities* in these Muslim countries. This justification is also invoked to rationalize the inclusion of Afghanistan in this list. It is clarified that ‘...a number of persons belonging to minority communities in Afghanistan have also come to India on account of religious persecution or fear of religious persecution. Hence, it was decided to include Afghanistan’ in the ambit (JPC, 2019, p. 37). The religious persecu-

tion of non-Muslims is also seen in relation to the wider Indian interest in Afghanistan. It is asserted that ‘there have been multiple attacks against Indian interests in Afghanistan by the Pakistan...sponsored LET, Haqqani Network and Taliban’, hence...minority communities are facing ...atrocities due to their Indian origin’ (JPC, 2019, p. 35-36).

The MHA, however, also makes it clear that it does not ignore the plight of minorities in other neighboring countries such as Sri Lanka and Myanmar. It is emphasized that the government follows a *Standard Operating Procedure* (SOP) since 2011 for dealing with foreign nationals. These guidelines are applicable for all persons seeking refuge in India. The SPO, therefore, is a legal procedure available to all refugees in India, which allows them to reside in India as legal immigrant. These individuals may apply for Indian citizenship as per the rules spelt out in the Citizenship Act 1955. (JPC, 2019, p.36)

This clarification underlines the fact that six non-Muslim religious minorities of three Muslim countries are separated from the others migrants. However, these six non-Muslim minorities do not become Indian citizens only on the basis of *religious persecution*. The Legislative Department of the Ministry of Law makes it very clear that the CAA ‘...does not directly confer citizenship on these persons...it merely provides... the opportunity to be considered for the grant of certificate of naturalisation’. (Emphasis added, JPC, 2019, p. 40) In other words, the CAA enables the *illegal migrants* belonging to six specified communities from Afghanistan, Pakistan and Bangladesh to apply for Indian Citizenship in two categories, *Registration* [Section 5 (1) (a)] and *Naturalisation* (Section 6). (JPC, 2019, p. 40). For this purpose the Third Schedule was also amended and the residence requirement is reduced from eleven years to five years.<sup>25</sup> It simply means that the six non-Muslim minorities are given a particular kind of *relaxation* under the CAA.

This brings us to the second controversial issue, *the idea of minority*. The CAA 2019 does not use the term ‘minority’. Instead, it identifies six-non-Muslim communities. The naming of communities on religious basis actually goes against the established constitution principles. The Constitution of India introduces the terms such as *minority*, *Schedule Caste* (SC) and *Scheduled Tribe* (ST) as secular administrative categories. For instance, if a social group is culturally/religiously/linguistically distinct and numerically inferior, it might be recognized as a ‘minority’. If a social group had experienced caste

discrimination and/or untouchability in the past, it would be included in the 'Scheduled Castes' list. And, indigenous communities or tribes are to be officially recognized as 'Scheduled Tribes'. Since minority, SCs, and STs (and later the Other Backward Classes, the OBCs) are conceived as open, secular, administrative templates, no social group, technically speaking, would become a permanent constituent of these official-secular classifications.<sup>26</sup>

The JPC report also highlights this point. In fact, a constitutional expert criticized the CAA for not using the expression minority. He/she argued:

...If you want to be on the safer side, we would have to omit reference to religions like Hindus, Sikhs, Parsis etc. ....if we use the term 'persecuted minorities' the purpose would be served. As compared to communities, minorities would perhaps be more useful from the legal and constitutional point of view. (JPC, 2019, p. 37)

The Legislative Department, however, does not subscribe to this view. In its submission to the JPC, the Department justifies the use of religious categories:

Using persecuted minorities from the neighbouring countries instead of its current form may negate the objectives of the Bill. As there is a possibility for wider scope of interpretation, it may be construed to include other communities (religious or otherwise). Moreover, the aspect of 'religious persecution' would also be lost sight of." (JPC, 2019, p. 37)

It is obvious here that the official purpose of the CAA is to provide legitimacy to the idea of religious persecution. Interestingly, however, the term *religious persecution* is not included in the final text of the CAA, 2019. This strategic lapse requires some explanation. The process to enact the CAA, we must remember, began with an official notification issued in 2015. The six non-Muslim communities were given visa relaxation by amending the Visa rules (See Table 2). The term *religious persecution* was invoked in this notification as a legal plea in defense of the amendment. The MHA as well as the Legislative Department forcefully argue that the CAA is based on the gazette notification of 2015 hence there is no need to use the term religious persecution in the text of CAA.<sup>27</sup> The JPC accepted this rather vague explanation and did not ask a crucial follow up question: if *religious persecution* could be used in an official administrative order as a legal plea, why cannot it be accommodated in the text of bill presented for legislative scrutiny?

The official mechanism to determine religious persecution in a foreign land is equally ambiguous. The MHA gave a very evasive response to the JPC in

this regard. It is said that the inputs from security agencies along with other 'corroborative evidence in the print/electronic media would help to establish religious persecution in a foreign land' (JPC, 2019, p. 37). It was informed that a new Standard Operating Procedure (SOP) would be in place in future to streamline this process:

As per the Standard Operating Procedure (SOP) under preparation by MHA, for an applicant who applies ....mentioning that he/she was compelled to migrate to India due to religious persecution or fear of religious persecution, along with other supporting documents, a detailed enquiry will be conducted by Foreigners Regional Registration Office ...to verify his/her claim. If the affidavit is not supported by documents, the case will be referred to Foreigners Tribunals to be constituted for this purpose ...for verification of the claim regarding religious persecution." (JPC, 2019, p.37)

This explanation underlines the inherent weakness in the official explanation. How is it possible for the government to protect the interest of persecuted non-Muslim religious minorities without having a well-defined legal-administrative apparatus for determining the nature of religious persecution in a foreign territory?<sup>28</sup> This kind of questions becomes more complicated when we get to know that the number of persons seeking citizenship of India for the fear of religious persecution is almost insignificant.<sup>29</sup>

Exclusion of Muslims is the third controversial question. The CAA excludes Muslims in two ways. It highlights the persecution of non-Muslims in neighboring Muslim countries; and at the same time, does not include Muslims in the list of preferred migrants. This exclusion is seen as a clear violation of Article 14 (equality before law) and the Article 25 (Freedom of religion). The JPC also raised this question. The Legislative Department, however, offered a different explanation:

CAB...may not violate the spirit of Article 14..it upholds the test of *reasonable classification* as propounded by a seven Judge Bench in the State of West Bengal Vs. Anwar Ali Sarkar (AIR 1952 SC 75). Based on the clear classification adopted in the Bill, which is clear and substantial, there are sufficient reasons for making the distinction. There can be no element of arbitrariness in the classification proposed by virtue of these just reasons. With regard to Article 25, the proposed Amendment Bill does not, in anyway, affect the right of any person to freely profess, practice and propagate religion in the country. (JPC, 2019, p. 47)

This observation actually makes two broad arguments in defense of constitutional validity of the CAA. First, the law is justified on the basis of a legal

doctrine called *reasonable classification*. According to this doctrine, if a special law that is applicable only to a certain sections/groups, the court is entitled to ‘enquire whether the *classification is founded on a reasonable basis...or is arbitrary*’ (Emphasis added, AIR 1952 SC 75). The reasonableness of classification, in this sense, can only be questioned if a law violates the rights of other persons/communities, which are outside the scope of its legal ambit. The classification of migrants into *persecuted minorities* and others, by this logic, is called reasonable because it does not affect the rights of Muslim citizens in India. Second, the CAA is also justified on the basis of freedom of religion (Art 25). It is argued that this law aims to protect the religious rights of persecuted minorities seeking Indian citizenship. At the same time, it does not have any impact on the right to worship and religion of other Indian citizens including Muslims. This line of reasoning actually finds a clear political overtone in the speeches of BJP leaders.

This rather persuasive legal defense of the CAA as a special law becomes unconvincing when it is read in relation to NCR and NPR. As explained in the previous section that NCR and NPR are inseparable constituents of the established legal framework of Indian citizenship. The classification of usual residents into citizens and doubtful persons gets a radically different interpretation after the enactment of the CAA. It is important to remember that unlike previous NPR exercise (2010), the NPR 2020 aims to collect additional data such as Aadhar card number, and parents’ birthplace etc. (<https://cjp.org.in/wp-content/uploads/2019/12/NPR-manual.pdf> accessed on 19 May 2020). It is mandatory for the usual residents to provide this information. However, if a resident fails to submit sufficient documents to the NPR officials, including the proof that his/her parents were/are Indian citizens, his/her citizen may become doubtful. He/she would be listed in the ‘D’ category of the proposed NRC. The government has not yet evolved any mechanism to deal with such cases.<sup>30</sup> The CAA offers a clear cut answer to these ambiguities. It is easier for a *doubtful* Hindu, Jain, Sikh, Parsi, Buddhist and Christian person/resident to apply for Indian citizenship even if he/she does not have sufficient documents. He/she may justify his/her application by citing the term *religious persecution*. However, a *doubtful* Muslim would eventually be treated as a *foreigner* as he/she is excluded from the list.

Although the Prime Minister Narendra Modi categorically denied any relationship between CAA and the NRC-NPR (VIDEO: <https://www.youtube.com/watch?v=Gd-bwVUqb-s>), the Home Minister Amit Shah explained the CAA-NRC-NPR chronology in his various speeches and interviews.<sup>31</sup> He said, ‘first we will pass the Citizenship Amendment bill and ensure that all the refugees from the neighboring nations get the Indian citizenship. After that NRC will be made and we will detect and deport every infiltrator from our motherland. (<https://twitter.com/AmitShah/status/1123581776415399937> accessed on 19 May 2020).

VIDEO: [https://www.youtube.com/watch?v=Z\\_\\_6E5hPbHg](https://www.youtube.com/watch?v=Z__6E5hPbHg)

In another interview, Amit Shah also made it clear that the purpose of the CAA and NRC to deal with the problem of *infiltrators* at the national level. According to him, ‘all the Hindu, Sikh, Buddhist, Christians, they will get citizenship ... We want to walk up to them and give them citizenship. They wouldn’t be asked for any documents.’ (<https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so> accessed on 19 May 2020).

VIDEO: <https://www.youtube.com/watch?v=GOMx7zxOoUg>

This *political* explanation of the CAA-NRC-NPR by Amit Shah actually goes against the legal-technical arguments presented by the MHA to JPC. In the backdrop of this apparent political clarification, the legal reasonableness invoked by the MHA to defend CAA (as a special law that deals with a special group of people—persecuted minority) becomes completely irrelevant.

The relationship between Assam Accord and the CAA is the fourth controversial issue.<sup>32</sup> As pointed out earlier, the Assam Accord has been an important political phenomenon that redefines the contours of citizenship framework in India.<sup>33</sup> The CAA, broadly speaking goes against the spirit of the Assam Accord in two ways: it modifies the cut-off date from 1971 to 2014; and at the same time, makes a distinction between Muslim and non-Muslim migrants. These changes offer an opportunity to non-Muslim migrants of Bangladesh to apply for Indian citizenship even if they had entered the state of Assam after 1971. This is exactly what the Legislative Department asserted in its formal response to JPC:

...where any case regarding detection and determination as foreigner which is pending in respect of those persons belonging to the minority communities... who entered Assam from Bangladesh on or after 25th March, 1971, will have to be dealt with separately as such persons would be deemed to be ‘legal migrants’ on the enactment of the pro-



posed proviso... Moreover, pending proceedings, if any, against the aforesaid persons should be abated on the date of commencement of the proposed proviso and such persons should be eligible to apply for naturalisation. (JPC, 2019, p. 65)

The Department of Legal Affairs of the government, however, did not subscribe to this view and categorically argued that the CAB provisions go against the Assam Accord (JPC, p. 59). The JPC, it appears, dealt with this *official conflict of opinion* very delicately. While accepting the dominant view that CAA does not affect the Assam Accord, the JPC asks the government to respect the sentiments of the people of Assam and north-east:

The Committee feel (sic) that in view of the anxieties and concerns expressed by the civil society groups in Assam and other North-Eastern States, the State and Central Governments should formulate rules and regulations under this Clause (6A) to ensure that the identities of indigenous peoples are not threatened in any way by unintended consequences of the Citizenship Bill. (JPC, 2019, p.79)

The final version of the CAA, it seems, accommodated these suggestions. Section 3(4) of the new Law makes it clear that the changes introduced by the new amendment will not apply to ‘tribal area of Assam, Meghalaya, Mizoram or Tripura...and the area covered under *The Inner Line*’.<sup>34</sup>

This discussion actually introduces us to the functional aspects of Hindutva constitutionalism. It is clear that the non-Muslim migrants coming from three Muslim countries are not going to get Indian citizenship on their arrival. The government has not yet prepared the proper mechanism to determine the level of *religious persecution*—a precondition of citizenship as per the 2015 rules. The persecuted minorities will have to face a very different kind of bureaucratization. There is no guarantee that these migrants would eventually get Indian citizenship.

This technical ambiguity, however, is politically useful. It provides an opportunity to the Hindutva forces to reinvent the Hindu victimhood argument. It is worth noting that the conventional Hindutva issues—Ram temple, Triple Talaq/UCC and even Article 370,—have been more or less settled. It would be difficult for the BJP to sustain mobilization of Hindu voters on these lines. The citizenship to non-Muslims of Muslim countries, in this sense, is a new long term project of contemporary Hindutva. It has two advantages. First, the citizenship issue has a long history that goes back to the founding moments of the Indian republic. The post-2014 political obsession of BJP with the three Ps (*Partition, Patel and Pakistan*) provides a perfect platform to reclaim Hindu

victimhood in a more sophisticated manner. It would help the BJP to nurture its Hindutva constituency in a post-Ram Temple scenario. BJP does not offer citizenship to migrating Hindus to create its vote bank at the national level; instead, it wants to use the plight of migrating Hindus of Pakistan to validate its claims of *Muslim appeasement* in secular India. Secondly, the citizenship issue also has a remarkable political potentiality. It appears that BJP is keen to recognize citizenship as a point of reference to legitimize its interpretation of nationalism. This is exactly what Mohan Bhagwat calls the *national consensus*.

**Table 2: Legal justifications of Government and political arguments of BJP**

Controversial Issue	Legal-Technical justifications (Responses of the Government given to the JPC)	Political Arguments
Why only three Muslims countries?	+ State is empowered to invoke legal reasonableness to make laws for a set of people. + Refugees coming from other countries, including Muslims from these three countries may apply through the standard SOP system	+ Hindus have only one country on Earth to look to; while Muslims have over 60 countries in which to take shelter. + We are giving citizenship to persecuted minorities; it won't affect the citizenship of Indian citizens.
How to determine religious persecution in a foreign land?	+ No one gets automatic citizenship; it depends on Intelligence Bureau (IB) reports and other documents etc. + Five year time is required for persecuted minorities to be considered for citizenship; while for others who apply for Indian citizenship, it is 11 years. + Home Ministry is preparing a new SOP to deal with this question on case to case basis.	+ It is a well-known fact that non-Muslims face religious persecution in Muslim countries.
Is it anti-Muslim?	+ It does not contradict Art. 14 and Art. 25 of the Constitution that are related to the freedom of religion.	+It has nothing to do with Muslims. It is mainly concerned with non-Muslim minorities. + CAA will be followed by NRC/ NPR throughout India.
Does it ignore the Assam Accord?	+ CAA deals only with persecuted minorities—not all illegal migrants. + It does not contradict the Inner Line law.	+ Committed to protect the regional/national identity of Assamese people.

Source: Author

### **Hindutva Hegemony and the dilemma of the political class**

The Hindutva constitutionalism does not exist only as a dominant ideological interpretation. On the contrary, it operates as what Suhas Palishikar calls, the *emerging hegemony*.<sup>35</sup> To understand this political function of Hindutva discourse we have to closely look at the changing positions of political parties on Article 370 and the CAA.

The Congress led coalition, United Progressive Alliance (UPA) and some other opposition parties have always been critical of these issues. Even the non-BJP parties of the ruling coalition, the National Democratic Alliance (NDA), were not fully comfortable. However, the success of BJP's Hindu majoritarian politics in recent years has forced the entire political class to change its position on Hindutva driven issues simply to attract Hindu votes. The electoral calculation is the major factor that determines their changing stands. The manner in which the Jammu and Kashmir Reorganisation Bill and the CAA were passed in the Rajya Sabha—where the BJP did not have a clear majority—is a good example in this regard.

The President of India issued an official order the *Constitution (Application to Jammu and Kashmir) Order, 2019* on 5 August 2019 that in effect revoked the special status of the state protected by the Art. 370. On the same day, a bill the *Jammu and Kashmir Reorganisation Bill, 2019* was introduced in the Rajya Sabha. There were 104 NDA members in the House (including 75 BJP MPs) and it was not possible for the BJP to pass this bill without the support of other parties. Interestingly, AamAdmi Party (AAP), Telegu Desham Party (TDP), and the Bahun Samaj Party (BSP) supported the bill; while the Mamata Banerjee led Trinamool Congress (TMC) and Sharad Pawar's Nationalist Congress Party (NCP) walked out of the Parliament ([https://www.indiatoday.in/amp/india/story/jammu-and-kashmir-article-370-revoked-political-parties-support-oppose-1577561-2019-08-05#aoh=15967252695978&referrer=https%3A%2F%2Fwww.google.com&\\_tf=From%20%251%24s](https://www.indiatoday.in/amp/india/story/jammu-and-kashmir-article-370-revoked-political-parties-support-oppose-1577561-2019-08-05#aoh=15967252695978&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s)). This configuration was favorable for the BJP to smoothly get the bill passed.

In case of CAA, the government needed 121 votes in the House. Despite this lack of majority, the government was able to get the required support. It secured 125 votes in its favour, with 99 members voting against the bill). The All India Anna Dravida Munnetra Kazhagam (AIADMK), Janata Dal (United, JDU) and Biju Janata Dal (BJD) helped the BJP directly. At the same time, Shiv Sena,

NCP and the BSP did not participate in the voting. Their strategic absence also enabled the government to manage the numbers game.

This led to an interesting *politics of protest* against the CAA. One may find three very different trajectories in this regard. The opposition-ruled states passed resolutions against the CAA. Kerala was the first state that went in this direction, (<https://www.keralacm.gov.in/kerala-on-cao-nrc-npr/> accessed on 19 May 2020) followed by the Congress ruled-Punjab. These resolutions seem to question the ultimate authority of the Parliament on moral-political grounds. The Resolution passed by the Kerala Assembly questions the legality of the CAA. It says:

State Legislatures can discuss any issue that it deems fit and pass resolutions as well. It is well within its constitutional powers. The Kerala Legislative Assembly has passed a resolution demanding the Central Government to repeal the Citizenship Amendment Act 2019. Constitutionally, a State Assembly can do so' (<https://www.keralacm.gov.in/kerala-on-cao-nrc-npr/> accessed on 19 May 2020)

The second response was technical. The parties which had opposed this law in Parliament and voted against it, made a distinction between the CAA 2019 and the NRC/NPR exercise. These parties remained silent on CAA but opposed NRC/NPR overwhelmingly. The resolution passed by the AAP government in Delhi is an example of this stance (<http://delhiassembly.nic.in/Reviews/7thAssembly/1stP-II.pdf> accessed on 19 May 2020).

The third response was highly complex. The non-BJP parties of NDA, who had voted in favor of the government, changed their position in the aftermath of anti-CAA protests. The Janata Dal [United] (JDU), Biju Janata Dal (BJD), Telugu Desham Party (TDP), and YSR Congress Party (YSRCP) remained silent on CAA. However, these parties asserted that that they would oppose the NRC/NPR 2020. The Bihar Assembly, in fact, passed a resolution to this effect. The position of the Akali Dal is also very interesting. Although the Akali MPs went with the BJP and voted in favour of CAA, they demanded that Muslims must also be included in the list of communities.

This complex picture shows that the political class has accepted the significance of Hindutva hegemony as the dominant narrative of politics. This has been the reason why except a few parties, the non-BJP groups find it very difficult to take a confident position either on 370 or on the CAA. This acceptance of Hindutva hegemony, however, is not entirely hypothetical. A comparative analysis of changing public perceptions is very relevant to elaborate this point.

**Table 3: India belongs to whom?**

	India primarily belongs to only Hindus	India belongs to citizens of all religions equally, not just Hindus	Can't say/No response
1: Hindu	17	74	9
2: Muslims	6	87	8
3: Christian	5	85	11
4: Sikh	3	88	9
5: Buddhist/neo-Buddhist	2	74	24
6: Jain	12	84	5
8: No religion	7	53	40
9: Others	23	68	9
Total	15	76	9

Source: NES, 2019, CSDS-Lokniti Data unit (Figures may not add up to 100 percent due to rounding off. N=12196)

The CSDS-NES survey (conducted in April-May 2019) shows that an overwhelming majority of respondents supported the argument that India does not belong only to Hindus. In fact, 74 per cent Hindus clearly rejected the Hindutva propaganda that India is a natural Hindu homeland. On the other hand, only 6 percent Muslims appear to have lost faith in the secular promise that India belongs to citizens of all religions.

**Table 4: CAA/NRC and the Hindutva Hegemony**

	Fully support	Somewhat support	Somewhat oppose	Fully oppose	No response
CAA*	46 (Hindus 62%)	8	5	27 (Muslims 80%)	12
NCR**	46 (Hindus 61%)	8	5	26 (Muslims 79%)	13

Source: Delhi election Survey 2020, CSDS-Lokniti Data unit (Figures may not add up to 100 percent due to rounding off. N=3335)\*: Do you support or oppose CAA under which Hindus, Sikhs, Christians, Jains, Buddhists and Parsis coming from Pakistan, Bangladesh and Afghanistan can get India's citizenship but not Muslims coming from those countries?\*\*: If NRC is implemented, then every person living in India will have to provide documentary proof of their citizenship to the government. Do you support or oppose such an NRC?

However, the Delhi election 2020 survey introduces us to a very different set of opinions. This survey was conducted in January-February 2020, when the anti-CAA protests were going on throughout the country and Delhi's Shaheen Bagh had become the epicenter of this politics of protest. Table 3 shows that a majority of respondents supported the CAA and NCR. In fact, one finds a clear

communal divide on this issue. Almost 80 percent of Muslim respondents opposed the CAA-NRC; while the majority of Hindus (62 percent) did not find any problem with these issues. Interestingly, this serious communal difference in perception did not affect the choices of voters in the elections. The BJP could not get any political advantage from the communal divide for electoral gain, and it was the AAP party which emerged as the first choice of voters.

These two rather conflicting findings actually demonstrate the multifaceted political universe of contemporary India. The BJP has been successful in linking the abrogation of Article 370 and the CAA-NRC with its Hindutva hegemony. This political polarization, however, has not transformed the Hindu communities into a political entity or a vote bank.<sup>36</sup>

The 2019 election result in Odisha is another example that underlines this political trajectory. Both the main parties in this state—BJD and the BJP—relied heavily on the competing images of their leaders, Naveen Patnaik and Narendra Modi. The BJD won 12 out of 21 Lok Sabha seats with an impressive vote share of around 42 percent. This success story repeated itself in the assembly election too. BJD not merely won 112 out of 146 seats (a clear three-fourths majority) but its vote share also increased. The majority of Odisha's voters expressed faith in Naveen Patnaik state level leadership. However, one should not underestimate the looming presence of the BJP in the state. The party won eight Lok Sabha seats with a vote share of over 38 percent (an increase of 17 percentage points in comparison to 2014 Lok Sabha election). This performance is also reflected in the assembly election as well. Although, the party won only 23 seats in the assembly this time, its votes share went up to around 32 percent (15 percent higher than 2014 Assembly election). This remarkable performance has transformed the BJP into the principal opposition in Odisha.

This electoral outcome, however, does not tell us the conflict of images between Modi and Patnaik. According to the CSDS-Lokniti's post-poll survey an overwhelming majority of respondents (two in every three) identified Naveen Patnaik as the most suitable person for the post of the Chief Minister. When respondents were asked to express personal liking and disliking about these two leaders, nearly half the respondents (47%) opted for Patnaik and a little over one-fourth (26%) said they liked Modi. However, this did not mean that the people of Odisha ignored the Modi phenomena. The survey demonstrates



that even the BJD voters recognized Modi's strong leadership. On the question of who should be the next Prime Minister, the BJD voters overwhelmingly argued that Narendra Modi deserved to get another chance.<sup>37</sup> This example highlights the fact that BJP's electoral defeat at the state level does not affect its political dominance at the national level.

## Conclusion

This brings us to the main argument I wish to make in this paper. Our discussion shows that the Hindutva forces are no longer interested in declaring India a *Hindu Rashtra*; rather, the aim is to modify the existing legal-constitutional framework to expand the scope of Hindutva hegemony. The abrogation of the Article 370 and the CAA, in this sense, are the outcomes of this new politics of Hindutva constitutionalism. This politics relies heavily on the legal-technical ambiguities inherent in the provisions of the Constitution and provides them a political language.

The opponents of Hindutva, however, have failed to understand the political functioning of Hindutva constitutionalism. They treat the Indian Constitution as a self-explanatory political text and do not expand the scope of their political-intellectual arguments. This over-reliance on the Constitution as the ultimate template for democratic polity has eventually become counter-productive. The old argument that BJP does not respect the Indian Constitution is completely irrelevant now.

The overwhelming centrality of the Constitution as a source of politics, no doubt, demonstrates the greatness of this document which is still relevant after seven decades of independence. However, the tendency to *worship the Constitution*—either as a sacred book or as a self-explanatory political text is equally problematic. The Constitution is a living, man-made document, which always requires moral-ethical explanations to survive as a legitimate political document. The Constituent Assembly debates also show that the Indian Constitution was never envisaged as any kind of holy book. Instead, it was seen as a source that would help in constructing what Ambedkar calls the *Constitutional morality* (Mehta, 2010). Ambedkar was concerned about the possibility of legislative majoritarianism; and precisely for this reason, he forcefully argued for evolving a new kind of rational-egalitarian belief system in politics. He argues:

It is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to

the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality...that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. ...Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic. ([http://mls.org.in/books/HB-2667%20CPA%20Speeches%20\(Eng\).pdf](http://mls.org.in/books/HB-2667%20CPA%20Speeches%20(Eng).pdf) accessed on 7 August 2020)

The contemporary moment of Indian democracy, in this sense, not merely characterizes Ambedkar's apprehension but also marks an elusive search for a humane and distinctive political morality.

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## End notes

1. I use the term *liberal-constitutionalist* to describe a section of public intellectuals, journalists and civil society groups, who invoke the Constitution to oppose Hindutva. Although the non-BJP political parties do not formally associate with this group, the political binary between Hindutva and liberal has been clearly established. See: <https://www.washingtonpost.com/opinions/2019/06/26/i-am-an-indian-liberal-heres-what-we-are-doing-wrong/> (accessed on 7 August 2020).

2. It is important to clarify what I mean by the ‘contemporary moment of democracy’. Giorgio Agamben offers an interesting conceptualization of the term *contemporary*. He says: ‘contemporariness is...a singular relationship with one’s own time, which adheres to it and at the same time, keeps a distance from it. More precisely, it is that relationship with time that *adheres to it through a disjunction and an anachronism* (Agamben, 2009, p. 44). This valuable suggestion encourages us to do two things. First, we have to bracket the time which we call our contemporary moment. I find 2014 election as a significant watershed moment of Indian politics in this regard; and for this reason, I treat it as the beginning of our contemporary *political* time. Secondly and perhaps more importantly, we also have to explore those aspects of our political life that are often taken for granted. This is what I intend to do in this paper. I examine the unsettling nature of the discourse of democracy in its entirety by unpacking those inherent possibilities that leads to what Yogendra Yadav calls the ‘democracy capture’. (Yadav, 2020, pp. xxii-xxvii)

3. There is a considerable literature on various aspects of Indian constitutionalism. *The Politics and Ethics of Indian Constitution* (Bhargava, 2008) was the first systematic attempt in this regard. This edited volume tries to unpack various theoretical-political aspects of the Indian Constitution. In recent years, scholars have expanded the scope this discussion in a significant way. The contributions of Uday S. Mehta, Ornit Shani, Rohit De, and Madhav Khosla are very relevant in this regard.

4. Suhas Palshikar makes a similar point in a rather different way. He looks at the idea of state in relation to the framework offered by the Constitution. See, Palshikar 2008, pp. 143-163.

5. Gyan Prakash offers us a fascinating explanation of this debate in backdrop of national Emergency (1975-77). See Prakash, 2019. Pp. 71-75.

6. Uday S. Mehta argues that Indian ‘constitutionalism constitutes power and increases and celebrates its ambit. It is only through politics and the specific kind of power it sanctions that the nation can be imagined, administered and made just. But...in that vision, freedom is consigned to a distant prospect and the tendency for political power to operate without limits deeply ingrained, even if it is not always acted on’. See, Mehta, 2010.

7. Rohit De introduces us to the popular reception of Indian constitutionalism. Exploring ‘a new genealogy of Indian constitutionalism’ that emerges from the everydayness of people’s life, he unpacks the process by which the Constitution emerged as a realm of possibilities for citizens. (See, De, 2018, 30-31)

8. The *1951 Programme Document of the Communist Party of India* is very relevant here. The party recognized the significance of universal adult franchise, yet remained critical of the Constitution as a ‘pro-ruling class document’. (<https://www.revolutionarydemocracy.org/archive/1951prog.htm> accessed on 22 October 2020)

9. This small book examines the practicalities of Indian politics in relation to the established legal-constitutional structures in the 1950s. Narayan asserted that the politicians used existing prejudices and social stereotypes for electoral mobilization and as a result the Indian electoral process had become an ‘experience of demagoguery’. He argued that Indian polity should be reconstituted on a few other moral-political principles. Narayan, 1959.

10. The manner in which constitutionalism as a political strategy is played out by the political parties, especially in the realm of competitive politics, has not been given adequate intellectual attention. The emerging literature on constitutionalism does not take the *politics of constitution* and its electoral manifestations seriously.

11. It is worth noting that it was the colonial modern state that recognized the *Manusmriti* as the ultimate source of Hindu law. The Hindu nationalists of the 1950, in this sense, seem to embrace the modernist interpretation of Hindu law uncritically. However, this political reliability on the text like *Manusmriti* gradually declined in later years. In fact, Hindutva politics has almost disowned *Manusmriti* in order to construct a new imagination of Hindu unity. See, Debey, 2019, pp. 60-72.

12. The relationship between the RSS and the BJS (and BJP in the later years) needs to be clarified here. RSS was established in 1925 as a cultural-social organization committed for the Hindu cause. The organization was banned by the government on several occasions. The BJS was established in 1951 as a political party by a second section of RSS workers. The RSS describes the BJS and BJP as an ‘RSS inspired organizations’. See: (<http://rss.org//Encyc/2012/10/22/rss-vision-and-mission.html> accessed on 19 May 2020).

13. S.P. Mukherjee, the founder of Jan Sangh (who died in Kashmir in 1953), was very critical of India’s Kashmir policy. Mukherjee was a minister in the Nehru cabinet. However, he resigned and formed the BJS in 1951. The Hindu nationalist groups, especially the BJS and the BJP, evolved a clear political position on Article 370 and the special status of Kashmir on the basis of Mukherjee’s formulations. In fact, the figure of Mukherjee was transformed into a *political martyr* in later years (Madhok, 1990, 14-23).

14. It says: ‘No restrictions direct or indirect will be placed on granting visas to



those Hindus in East Bengal who are desirous of migrating to India' (BJS, Party Documents 1951-1972, p. 93).

**15.** 1964 Manifesto of the BJS says: 'There has been a continuous exodus of non-Muslims, especially Hindus from Pakistan due to its anti-Hindu policy...it is government's responsibility to rehabilitate and compensate them...BJS will...implement various schemes made in this regard... Citizenship rights will be conferred in the course of rehabilitation'. (BJS, Party Documents 1951-1972,p. 156)

**16.** A resolution passed by the RSS in 1956 is a good example in this regard. It says: 'The K. K.M. [Kendriya Karyakaarni manda] urges the Central Government to abandon its policies leading to the disintegration of the country and take such steps as will usher in a Unitary Form of Government. This step will not only help in cooling down the frayed tempers but will surely guide the course of our future national development on solid and stable foundations'. (<http://www.archivesofrss.org/Resolutions.aspx> accessed on 6 August 2020).

**17.** For a detailed discussion on the idea of Muslim appeasement see (Ahmed, 2019).

**18.** The term 'Hindutva' was coined by V.D. Savarkar, the leader of the Hindu Mahasabha, in 1923. In his book Hindutva, Savarkar identifies a few characteristics of the Hind nation—a marked geography, a common language, a common culture and a belief that this land is a holy land. He argues: 'A Hindu [. . .] is he who looks upon the land that extends from Sindu to Sindu—from the Indus to the Seas, as the land of his forefathers—his Fatherland (Pitribhu), who inherits the blood of that race whose first discernible source could be traced to the Vedic Saptasindhus [. . .] who has inherited [. . .] the common classical language Sanskrit and is represented by a common history, a common literature, art and architecture, law and jurisprudence, rites and rituals, ceremonies and sacraments, fairs and festivals; and who above all, addresses this land, this Sindhusthan as his Holyland (Punjabhu), as the land of his prophets and seers, of his godmen and gurus, the land of piety and pilgrimage'. ([http://savarkar.org/en/encyc/2017/5/23/2\\_12\\_12\\_04\\_essentials\\_of\\_hindutva.v001.pdf\\_1.pdf](http://savarkar.org/en/encyc/2017/5/23/2_12_12_04_essentials_of_hindutva.v001.pdf_1.pdf) accessed on 19 May 2020)

**19.** In a land mark judgement, the Supreme Court of India conceptualized the term 'Hindutva' as a way of life (AIR 1996 SC, 1113). Although the Court criticised the use of any direct reference to any religion in electoral campaigns, it did find the term Hindutva objectionable. This verdict encouraged the Hindu nationalist groups to describe their politics as *expressions of Hindutva*. For an elaborated discussion on this point, especially the BJP's changing attitude on Hindutva, see, Ahmed, 2019, pp. 65-73.

**20.** For an elaborated discussion on this point see, (Ahmed 2019, chapter 4)

**21.** According to Bhagwat, Ambedkar reminded the Constituent Assembly that internal conflicts among Indians were the main reason behind our political slavery

therefore we must unite as a nation. (Interestingly, he did not quote him directly here!) (<http://rss.org/Encyc/2018/9/19/Bharat-of-Future-An-RSS-Perspective-day-2-mohanji-bhagwaat.html> accessed on 19 May 2020). This invocation of national unity through legal means, Bhagwat suggests, was the national consensus of that time, which led to the making of the Indian constitution.

**22.** For a comprehensive discussion on the idea of minority in the Indian context see: (deSouza, Ahmed and Alam, 2019)

**23.** For an elaborated discussion on Hindu victimhood see: (Ahmed, <https://www.thehindu.com/opinion/op-ed/why-minorities-feel-alienated-in-india/article27407047.ece> accessed on 19 May 2020)

**24.** An editorial published in the *Kamal Sandesh*—the official journal of the BJP—makes this point in an elaborate manner. It says: Article 370 was considered the root cause of all the problems faced by the state on all fronts. ...It was an irony that although it was included in constitution as temporary and transient provision, it was treated as permanent by Congress and its allies... the continuance of this provision helped shape separatist mindset among a section of Kashmiri youth...it was the strong political will... of...Narendra Modi and...Amit Shah that the Article 370 now stands a dead letter and a dark chapter in country's history has been closed. (<http://www.kamalsandesh.org/new-dawn-jammu-kashmir-ladakh/> accessed on 6 August 2020)

**25.** The CAA 2019 makes the following changes in the Third schedule: 'Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years".'

**26.** For a detailed discussion on this point, See (desouza, Ahmed and Alam, 2019, chapter 4)

**27.** Responding to the question as to why is the term 'Religious Persecution' not used anywhere in the Bill or in the Principal Act, the Legislative Department states: "the Bill has been drafted in such a way that it gives reference to the notification dated 7.9. 2015, containing the above expressions' (JPC, 2019, p. 37).

**28.** Malavika Prasad explained this point more fully. See: (<https://www.thehindu.com/opinion/op-ed/left-to-the-whims-of-the-executive/article30332157.ece> accessed on 19 May 2020)

**29.** The Intelligence Bureau (IB) informed the JPC about the number of beneficiary: "As per our records, there are 31,313 persons belonging to minority communities (Hindus - 25447, Sikhs - 5807, Christians - 55, Buddhists - 2 and Parsis - 2) who have been given Long Term Visa on the basis of their claim of religious persecution in their respective countries and want Indian Citizenship. Hence, these persons will be immediate beneficiaries." (JPC, 2019, p.39).

**30.** The NRC exercise in Assam is a good example. The documents like Aadhar Card, Ration Card, and Voter list were not accepted by the officials as an evidence of citizenship. In many cases, residents were asked to produce certificates/papers that could demonstrate that their parents were also born in India and had legitimate Indian citizenship.

**31.** Modi's speech in the parliament is very relevant. (<https://www.narendramodi.in/text-of-prime-minister-narendra-modi-s-reply-to-the-motion-of-thanks-on-the-president-s-address-in-the-rajya-sabha-548325> accessed on 19 May 2020)

**32.** For an excellent overview of this point, see: (<https://www.epw.in/engage/article/anti-caa-protests-and-state-response-assam> accessed on 19 May 2020)

**33.** The process of updating the NRC on the basis of the changes introduced in the citizenship laws in the 1980s have emerged as highly controversial political issues in recent years. The names of those persons (or their descendants) that appear in the NRC, 1951, or in any of the official documents up to the midnight of 24th March 1971 which would prove their presence in Assam, are to be recognized as Indian citizens. The draft NCR was published on 30 July 2018 that excluded around 400,000 people living in Assam.

**34.** This is exactly what Bhupendra Yadav, BJP's General Secretary writes. He says: 'There is also a charge that the legislation is against North-eastern states. This also is not true. The government has exempted all Inner Line Permit regions of the Northeast from its ambit. Further, it has not included the tribal areas in the northeast.' (<http://www.kamalsandesh.org/granting-citizenship-people-persecuted-faith-not-violate-constitution/>)

**35.** For an elaboration of the idea of *emerging hegemony* of Indian politics, see Palshikar, 2019, 101-116.

**36.** *Hindu polarization* is different from a *Hindu vote bank*. BJP has successfully appropriated the growing religiosity among Hindus to rearticulate the religious-doctrinal distinctiveness of Hinduism into an electoral project. This social *polarization* certainly has given an advantage to the BJP to a champion of Hindu interests (Dubey 2019). However, this has not yet emerged as the most *decisive factor* for Hindus to vote as a community of voter. For a discussion on changing Hindu religiosity and its political manifestations, see, Kumar (2018).

**37.** Over three of every five respondents, who preferred Patnaik (when asked to choose between the two in a direct question) were found to be backing Narendra Modi for the post of the Prime Minister. Among the voters of the BJD, nine of every ten (90 percent) wanted Patnaik to be the CM, while over two thirds (68 percent) said that they would like Modi to become the PM (even though they had voted for the BJD in the Lok Sabha election!). For detailed analysis, see Ahmed and Swain, 2019.

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