

British Rule: A Closer Look at The Colonial Influences Continuing to Polarize Hindu and Muslim Communities in India

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For decades, Indian society has grappled with persistent religious tensions between its Hindu and Muslim communities. Despite its significant religious diversity, Hinduism constitutes the majority religion in India. The nation also harbors one of the largest Muslim populations globally, representing its most significant religious minority.¹ Public criticism and extensive documentation highlight the substantial involvement of the Indian government in perpetuating ongoing violence and discrimination against minority religious groups.² Despite relentless advocacy from human rights activists and organizations, the government's response to address discrimination and violence against religious minorities has been woefully inadequate.³ Government officials' blatant denial of religious discrimination in contemporary government practices only serve to perpetuate the systemic

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¹ Lindsay Maizland, *Indian Muslims: An Increasingly Marginalized Population*, COUNCIL ON FOREIGN RELS. (last updated July 14, 2022, 3:00 PM), <https://www.cfr.org/background/india-muslims-marginalized-population-bjp-modi>.

² *India: Government Policies, Actions Target Minorities*, HUM. RTS. WATCH (Feb. 19, 2021 9:00 AM), <https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities> ("Authorities in India have adopted laws and policies that systematically discriminate against Muslims and stigmatize critics of the government, Human Rights Watch said today."). See also Nehal Ahmed, *'Anti-Muslim Bigotry has been Normalised Under Modi'*, AL JAZEERA (Apr. 12, 2018), <https://www.aljazeera.com/features/2018/4/12/anti-muslim-bigotry-has-been-normalised-under-modi>.

³ World Report 2023, *India*, HUM. RTS. WATCH (last visited Nov. 11, 2023), <https://www.hrw.org/world-report/2023/country-chapters/india#7ebcf0>.

alienation experienced by the Muslim community in India.⁴ However, these practices did not solely emerge upon India's formation in 1947. Instead, they trace their found roots to colonial influence under the British Raj.

India has perennially struggled with the tug-of-war between pluralism and uniformity. The British endeavor to balance these interests left a polarized nation that conflates religious differences and political differences. The lasting imprint of the British Empire, epitomized by the Indo-Pak partition in 1947, continues to mold modern India, evident in the persistence of discriminatory government policies and practices.⁵ The ascendancy of Hindu political dominance in India, in part influenced by British rule, has closely tethered Hinduism to the Indian identity. However, this imposition has negatively impacted the Muslim minority in India and facilitates religious

⁴ "Asked . . . by a US reporter what steps he was willing to take to 'improve the rights of Muslims and other minorities in your country and to uphold free speech,' Modi said they did not need to be improved. 'Our constitution and our government and we have proved democracy can deliver. When I say deliver, regardless of caste, creed, religion, gender – there is absolutely no space for any discrimination [in my government],' the Hindu nationalist leader told reporters at the White House." *'No Space for Discrimination' in India: Modi Amid Rights Concerns*, AL JAZEERA (June 22, 2023), <https://www.aljazeera.com/news/2023/6/22/no-space-for-discrimination-in-india-modi-amid-rights-concerns>; see also Kanishka Singh & Nandita Bose, *Narendra Modi Denies Religious Discrimination Exists in India*, REUTERS (June 22, 2023, 9:44 PM), <https://www.reuters.com/world/biden-says-will-talk-human-rights-rule-law-with-modi-2023-06-22/>. But see *India: Violence Marks Ram Temple Inauguration*, HUM. RTS. WATCH (Jan. 31, 2024), <https://www.hrw.org/news/2024/01/31/india-violence-marks-ram-temple-inauguration> (describing Modi's warnings to "show faith, not aggression").

⁵ Indo-Pak means relating to India and Pakistan. *Indo-Pak*, COLLINS DICTIONARY, <https://www.collinsdictionary.com/us/dictionary/english/indo-pak> (last accessed Nov. 29, 2023).

violence across the country.⁶ This note explores the historical roots of such practices, tracing their origins to westernization, British governance, and the partition of colonial India, analyzing the impact of these historical events on modern-day government practices and communal violence throughout the region.

Section I provides background on the development of Hindu-Muslim relations in pre-colonial India. Religious tensions trace back to the predominantly Muslim Mughal Dynasty from the 16th to 18th centuries. After the fall of the Mughal Empire, the East India Company obtained control of India to further expand its trading empire. Its ultimate failure to control the Indian people led to the Company's dissolution in favor of direct British governance—often referred to as the British Raj. This section will show that although religious tension may have begun prior to the British, the distinct communal identities evident today did not materialize until eventual British control. Rather, throughout this period there were many instances Hindu and Muslim society and interests converged and aligned.

Section II explores the influence of colonialism and orientalist ideologies under the British Raj to define the Indian population by employing religious identities. The conflicting interests of uniformity of law and pluralistic society led to Hindu dominance in government and society alike. Through family and property law, language, census, and political systems, the British Raj strengthened the divide between the Hindu and Muslim communities in India. The religious based partition of India and Pakistan perpetuated a divided system by establishing independent nations that sought to be defined almost exclusively by religious identity. This history lays the groundwork for modern day India and demonstrates the incorporation of Hinduism into the Indian identity.

Section III explores current day government practices that are derived from the British Raj. These

⁶ It would be remiss to ignore that Muslims are not the only minority group or religious group negatively impacted by colonialism, partition, and modern-day Indian government. However, for the sake of this note the focus will be exclusively on the impact on Muslims in India.

practices continued and reformed from British governance enable the separation and exclusion of Muslim interests in modern government. The similarities and differences between British and Indian governance demonstrate the perpetuation of an unequal system that encourages the conflation of religious and political differences. This system sheds light on the failures of a seemingly pluralistic government structure controlled by a political group aimed at creating Hindu hegemony.

Section IV explores current government practices that continue to define the Indian identity by Hindu values. Under the disguise of justice, the Indian government implements new exclusionary measures that deplete the quality of Muslim life in India. The affirmative alienation of Muslims through these efforts denies Islam's deep history in India and solidifies the role of Hinduism in the Indian government. By analyzing the effects of law and policy in India as an independent nation, this section hopes to demonstrate the impact of colonial influence on government actions to support the growth of Hinduism while simultaneously facilitating the isolation of the Muslim community in India.

This analysis delves into the historical underpinnings of modern government practices in India, spotlighting the interplay of colonial legacies, religious identities, and political dynamics. From the pre-colonial era to the present day, the evolution of Hindu-Muslim relations has been shaped by a complex web of historical events—namely British colonization and the subsequent partition of India. By tracing the trajectory of historical forces through to present-day realities, this analysis illuminates the enduring impact of colonial influence on Indian governance and the ongoing struggle for religious pluralism and equality in the region.

I. PRE-COLONIAL DEVELOPMENT

The Hindu-Muslim conflict denotes the long-standing religious conflict and violence between the Hindu

and Islamic communities in India.⁷ Hinduism, accounting for over 70% of the population, stands as the predominant religion in India.⁸ Islam, constituting the largest religious minority in India, comprises approximately 14-15% of the population.⁹ The roots of the conflict are debated, but there is general agreement that it was exacerbated by British influence.

The violence between the two communities generally attributed to British governance stems from the development of a divide-and-rule regime.¹⁰ Other experts contend that the tensions predate the British and can be traced back to Muslim rule in pre-colonial India—the Mughal Empire.¹¹ The translation of the history prior to the British colonial period remains murky but the events that took place are generally accepted. Still, the viewpoints

⁷ Raheel Dhattiwala, *The Hindu & The Muslim in India: A Communal Conflict?*, THE WIRE (Aug. 2, 2022), <https://thewire.in/communalism/hindu-muslim-conflict-communal-racial-violence>.

⁸ *2022 Report on International Religious Freedom: India*, Section I on *Religious Demography*, U.S. DEPT. OF STATE, <https://www.state.gov/reports/2022-report-on-international-religious-freedom/india/#:~:text=The%20World%20Religion%20Database%20estimates,%3B%20and%20Sikhs%2C%201.8%20percent> (last visited Feb. 13, 2024).

⁹ *Id.*

¹⁰ Akhilesh Pillalamarri, *The Origins on Hindi-Muslim Conflict in South Asia*, THE DIPLOMAT (Mar. 16, 2019), <https://thediplomat.com/2019/03/the-origins-of-hindu-muslim-conflict-in-south-asia/>.

¹¹ See generally JOHN KEAY, *INDIA A HISTORY* 464 (rev. & expanded ed. Grove Press 2010) (acknowledging that Hindu-Muslim division “was a fact of life” pre-dating British rule); Edward A. Gargan, *The Hatreds of India: Hindu Memory Scarred by Centuries of Sometimes Despotic Islamic Rule*, N.Y. TIMES, (Dec. 11, 1992), <https://www.nytimes.com/1992/12/11/world/hatreds-india-hindu-memory-scarred-centuries-sometimes-despotic-islamic-rule.html>. But see Rajeev Kinra, *Revisiting The History & Historiography of Mughal Pluralism*, 5 REORIENT, no. 2, Spring 2020, at 137, 138 (attributing the negative view of the Mughal Empire to “modern communal anxieties and the sort of ‘two-nation’ thinking that lumps all “Hindus” and “Muslims” in South Asia into two reified, presumably antagonistic, communities and anachronistically projects those identities back into the distant pre- and early modern past”).

and background information vary between sources. Despite the origins of the tensions between Muslim and Hindu populations in India, a review will be helpful to understand the biases perpetuated under British rule that still cause lingering ramifications today.

A. *The Mughal Empire*

The rise and fall of Muslim rulers in pre-colonial India created an initial disdain towards Islam within the Hindu community. The origin of the disdain is debated by scholars with some arguing the disdain was artificially created by British forces and modern Hindu nationalist movements.¹² However, understanding this debated history is critical to understanding the impact of British colonization.

Islam has a long history in India and members of the Indian population have been adherent to Islam for generations. After the conception of Islam in the 7th century, Islam was first brought to Northern India by a series of unsuccessful Arab invasions.¹³ The Muslim rulers of the Mughal Empire followed the Arabs.¹⁴ Throughout this period, Islam became embedded in many parts of Northern India.¹⁵ Mughal Emperors' antipathy for Hinduism detrimentally affected Hindu-Muslim relations by encouraging a Muslim favored hegemonic society. The Mughal Dynasty controlled India from the early 16th to

¹² See, e.g., Ajay Verghese, *British Rule & Hindu-Muslim Riots in India: A Reassessment*, BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFFS. (Aug. 23, 2018), <https://berkeleycenter.georgetown.edu/responses/british-rule-and-hindu-muslim-riots-in-india-a-reassessment#:~:text=It%20was%20the%20British%20that,thereby%20promoting%20violence%20between%20them>.

¹³ See James D. Brown, *The History of Islam in India*, 39 THE MUSLIM WORLD 1 (Jan. 1949), <https://doi.org/10.1111/j.1478-1913.1949.tb00991.x>.

¹⁴ *Id.*

¹⁵ *Id.* at 315-16; Deepa Badrinarayana, *A Colonial Perspective of Human Rights: Introductory Insights from British India*, 58 TEX. INT'L L.J. 45, 51 (2022).

mid-18th centuries and served as India's first colonizer.¹⁶ The emperor Babur led the successful Mughal invasion into India and viewed the Hindu religion and its people negatively.¹⁷ He was not the only Mughal Emperor to share this sentiment. There were many periods of discrimination and violence.¹⁸ Emperors killed Hindus, forced many to convert to Islam and desecrated Hindu temples.¹⁹ Emperors, including and following Babur, imposed taxes on non-Muslims and prevented the development and rebuilding of Hindu temples originally destroyed during the Mughal invasion.²⁰

¹⁶ Badrinarayana, *supra* note 16, at 48.

¹⁷ Emperor Barbur spoke very negatively about northern India (once known as Hindustan) after the Mughal invasion, saying "Hindustan. . . is a country that has few pleasures to recommend it. The people are not handsome. They have no idea of the charms of friendly society, of frankly mixing together, of familiar intercourse. . . . They have no genius, no comprehension of mind, no politeness of manner, no kindness or fellow-feeling, no ingenuity or mechanical invention in planning or executing their handicraft works, no skill or knowledge in design or architecture; they have no horses, no good flesh, no grapes or musk melons, no good fruits, no ice or cold water, no good food or bread in their bazaars, no baths or colleges, no candles, no torches, not a candlestick." Gargan, *supra* note 12; *see also* Stephen Dale, *India under Mughal Rule*, in *THE NEW CAMBRIDGE HIST. OF ISLAM* 266, 272 (Cambridge University Press ed., 2010) (detailing Emperor Babur's view of Hindus in India), Cambridge Core (published online Mar. 2011).

¹⁸ Badrinarayana, *supra* note 16.

¹⁹ Badrinarayana, *supra* note 16.

²⁰ Badrinarayana, *supra* note 16, at 53.

However, some Mughal Emperors embraced the pluralistic society in India.²¹ During these periods there was a noticeable collaboration between Hindus and Muslims, evidenced by the increase in Hindu involvement in government and society.²² This collaboration led to the merging of culture, social norms, language, and beyond.²³ While by no means a perfect attempt at governing a pluralistic society, these periods of Mughal rule showcase the collaboration in development of both Hindu and Islamic life and culture.²⁴

Overtime the Mughal Dynasty deteriorated in India.²⁵ While there were many power disputes during the decline, it is often attributed to the fact that the Mughal Empire ultimately struggled as a decentralized empire with a Muslim minority ruling a Hindu majority.²⁶ By the mid-18th century the Mughal Dynasty began to crumble. The British sought control of India to further their trading empire while Hinduism regained strength with the rise of Hindu kingship.²⁷ The Muslim population remained in

²¹ The Mughal Emperor Akbar believed in the concept of *ṣulḥ-i kull*, which promoted religious pluralism as a necessary aspect of governance for the continued success of the Mughal Empire. In example, Akbar married a Hindu woman and at many times showed grace towards the Hindu community, allowing them to rebuild their temples, removing taxes imposed on them, and forbidding forced religious conversion to Islam. He enabled Hindus active participation in the Mughal Empire. DALE, *supra* note 18, at 278; *see also* Abhishek Mehrotra, *The Real History of Hindu-Muslim Relations Under Akbar*, THE DIPLOMAT (Dec. 9, 2017), <https://thedi diplomat.com/2017/12/the-real-history-of-hindu-muslim-relations-under-akbar/> (describing the positive and cohesive relationship between Hindus and Muslims under Mughal Emperor Akbar).

²² *Id.*

²³ *See supra* note 22.

²⁴ For a deeper discussion on the development and complexity of Hindu-Muslim relations in India, *see* Cynthia Talbot, *Inscribing The Other, Inscribing The Self: Hindu-Muslim Identities in Pre-Colonial India*, 37 COMPAR. STUD. IN SOC'Y & HIST. 623, 692 (1995).

²⁵ *See generally* DALE, *supra* note 18, at 267.

²⁶ *Id.*

²⁷ Badrinarayana, *supra* note 16, at 56-57; *see generally* JOHN KEAY, FROM TAJ TO RAJ: 1682-1750, in *INDIA A HISTORY* (rev. & expanded ed., Grove Press 2010).

India, having established roots prior to or during the Mughal Dynasty.²⁸

B. The East India Company

The British came to pre-colonial India during the Mughal Empire for trade and colonization.²⁹ In the 1750s, as the Mughals fell, the British imposed a government run by the East India Company, given sovereign power on behalf of the British Crown.³⁰ After a period of peace the tensions between Indians and British became exuberant. British officers harbored cultural and racial insensitivity towards Hindus and Muslims alike, who some British claimed, “were at an earlier stage of human development.”³¹ Westernization was forced onto the Indian community at an alarming rate and many missionaries threatened and questioned the Hindu and Islamic faiths.³² This disdain towards both Hindus and Muslims promoted collaboration between the communities with the aligned interest of freedom from the East India Company.

The Indian population rebelled in 1857 across the country in what some call the Indian Mutiny.³³ It was one of the few times in Indian history Hindus and Muslims fought side by side.³⁴ The rebellion was unsuccessful and failed to eviscerate British rule. Instead, the British

²⁸ For more on the development of Islam in India and the Muslim role in society, see Satish Saberwal, *On The Making of Muslims in India Historically*, 55 SOCIO. BULL. 237, 237 (2006).

²⁹ Badrinarayana, *supra* note 16, at 56.

³⁰ *Id.*

³¹ Peter Robb, *On the Rebellion of 1857: A Brief History of an Idea*, 42 ECON. & POL. WKLY. 1696, 1696 (2007); see also Fritz Blackwell, *The British Impact on India, 1700-1900*, 13 EDUC. ABOUT ASIA 34, 35-36 (2008) (discussing the British disdain of Indians during the East India Company's Rule).

³² See 1 Guide to International Legal Research § 5.05 (2024) Lexis; see also Blackwell, *supra* note 32.

³³ KEAY, *supra* note 12. It has also been called the Sepoy Rebellion, Indian Rebellion, the Uprising, or the First War of Independence. *Id.* The word sepoy refers to the Indian soldiers who are recognized for initiating the Rebellion. *Id.*

³⁴ R.A. Geaves, *India 1857: A Mutiny or A War of Indep.? The Muslim Persp.*, 35 ISLAMIC STUD., no. 1, Spring 1996, at 25, 40.

dissolved the East Indian Company's rule and replaced it with direct rule by the British Government, referred to as the British Raj.³⁵ The Mutiny recognized a new British goal: separating the Hindu and Muslim communities to maintain control of India.³⁶ Enter the era of the British Raj, which acted as the final steppingstone before the Indo-Pak partition.

II. THE COLONIAL IMPACT—TETHERING RELIGION TO NATIONAL IDENTITY

The British Raj maintained direct control of British India,³⁷ encompassing what is now the Republic of India, Islamic Republic of Pakistan, and People's Republic of Bangladesh.³⁸ It began in 1858, after the abolition of the East India Company and lasted until India's and Pakistan's independence in 1947.³⁹ The British Raj ruled under a theory of '*Divide et Impera*' which translates to divide-and-rule.⁴⁰ Orientalists pushed for the recognition

³⁵ Badrinarayana, *supra* note 16, at 59. Officially called the British Indian Empire, 'Raj' denotes a rule, ruler, or king in Hindi and British Raj or British India became the commonly used terms for the region and the time period. *British Raj*, NEW WORLD ENCYCLOPEDIA, [https://www.newworldencyclopedia.org/entry/British_Raj#:~:text=British%20Raj%20\(r%C4%81j%2C%20lit.,Empire%20on%20the%20Indian%20subcontinent](https://www.newworldencyclopedia.org/entry/British_Raj#:~:text=British%20Raj%20(r%C4%81j%2C%20lit.,Empire%20on%20the%20Indian%20subcontinent) (last visited Nov. 18, 2024).

³⁶ Shashi Tharoor, *The Partition: The British Game of Divide & Rule*, AL JAZEERA (Aug. 10, 2017), <https://www.aljazeera.com/opinions/2017/8/10/the-partition-the-british-game-of-divide-and-rule>.

³⁷ Badrinarayana, *supra* note 16, at 59.

³⁸ *Compare Map of British India in 1914*, MANATU TAONGA — MINISTRY FOR CULTURE AND HERITAGE, <https://nzhistory.govt.nz/media/photo/map-british-india-1914> (last updated Feb. 25, 2024), *with* KEAY, *supra* note 12, at xv (depicting a map of South Asia today).

³⁹ KEAY, *supra* note 12, at 446.

⁴⁰ Belkacem Belmekki, *Muslim Separatism in Post-Revolt India: A British Game of Divide et Impera?*, 94 ORIENTE MODERNO no. 1, 2014, at 113, 118.; *see also* Zoltan Barany, *The Soldier & The Changing State: Building Democratic Armies in Africa, Asia, Europe, & The Americas*, ch. 8, 245 PRINCETON UNIV. PRESS 247 (2012).

of religious identities in the region to address the failures of British governance under the East India Company.⁴¹

The divide-and-rule regime in India persisted for three major reasons. First, the divide-and-rule regime addressed concerns over another Mutiny, seeing the capabilities of the people when the Hindu and Muslim communities united.⁴² Second, separating the British from the indigenous peoples of India ensured British dominance and control. The British found it “undesirable” to give the natives “opportunities” to see European soldiers in positions of weakness or equality.⁴³ And third, Orientalists pushed for the recognition of religious identities in the region to address the failures of British governance under the East India Company.⁴⁴ As a result, legal structure and governance in India was developed around religious practices.⁴⁵ This ideology fostered a political environment separated by religious identity that paved the way for partition and the subsequent discriminatory government action today.

The discrepancies between the British view of religious groups in India fostered the development of an

⁴¹ See generally Kaushik Bagchi, *An Orientalist in The Orient: Richard Garbe's Indian Journey, 1885-1886*, 14 J. OF WORLD HIST., no. 3, Sept. 2003, at 281.

⁴² “Towards the people and the army it meant an emphasis on differences of caste and creed in order to prevent, as Sir John Strachey once wrote, ‘the growth of any dangerous identity of feeling from community of race, religion, caste or local feeling.’” Neil Stewart, *Divide & Rule: British Pol’y in Indian Hist.*, 15 SCI. & SOC’Y, no. 1, Winter 1951, at 49, 49 (talking about the reasoning behind divide and rule following the Indian Mutiny). Others also said that “Hindoos and Musselmans are natural enemies, the same with Sikhs; yet the result of mixing them in one corps has been to make them all join against the Government . . . which they would never have done had the races been kept in distinct corps.” *Id.* at 55.

⁴³ *Id.* at 49 (talking about the reasoning behind divide and rule following the Indian Mutiny).

⁴⁴ See generally Bagchi, *supra* note 42.

⁴⁵ Elizabeth Kolsky, *Colonial Order, British Law: The Empire & India: Codification & The Rule of Colonial Difference: Criminal Procedure in British India*, 23 L. & HIST. REV. 631, 636 (2005) (“Administrators in India invoked various forms of historical, cultural, and religious peculiarity to legitimize colonial governance, thereby undermining the universal nature of legal reform.”).

inequitable society. The British viewed British India in terms of Hindus and Muslims, with a greater appreciation for the former.⁴⁶ They found Muslims “fanatical” compared to their Hindu counterparts.⁴⁷ As a result, policies and practices were often established that favored the Hindu population and reflected modern practices.

This note does not intend to suggest that Hindus flourished under British governance.⁴⁸ Nor does it attempt to suggest that the British are the sole cause of the religious discrimination in India today. Rather, British colonialism following a Muslim dominated empire in conjunction with an era of religious revivalism created an environment where Hindu elites were able to advocate and engage in the development of law and society. As the majority group in India, it follows that the Hindu favor was more valuable to the British than minority groups. And recognizing the power that came with the continued division between religious groups, the British were able to extort and advance religious discrimination through division in language, law, and politics in India.

A. Linguistic Division

Hindustani refers to the lingua franca comprising the overlapping dialects of Hindi and Urdu.⁴⁹ A majority

⁴⁶ Francis Robinson, *The British Empire & Muslim Identity*, 8 TRANSACTIONS OF THE ROYAL HIST. SOC'Y, 1998 271, 273 (1998) (“From the very beginning of the serious study on India in the eighteenth century, Warren Hastings and the orientalist around him—Jones, Halhed, Wilkins—thought of India in terms of Hindus and Muslims. The former were seen to have enjoyed a great classical civilisation to 1200 AD, while the latter where interlopers in the subcontinent whose empire from the thirteenth century coincided with decline of classical Indian civilisation.”).

⁴⁷ *Id.*

⁴⁸ See, e.g., Chandra Mallampalli, *Forum: Maneuvering The Personal Law System In Colonial India: Escaping The Grip of Personal Law in Colonial India: Proving Custom, Negotiating Hindu-ness*, 28 L. & HIST. REV. 1043, 1047 (Nov. 2010) (describing the fallacies in the British interpretation of Hindu personal law).

⁴⁹ ALOK RAI, HINDI NATIONALISM 15 (Neeladri Bhattacharya ed., Orient Longman 2001) [hereinafter HINDI NATIONALISM].

of pre-colonial India is suggested to have spoken Hindustani, a result of the pluralistic society that existed long before Mughal Rule.⁵⁰ Because of the ambiguity behind the language, the term Hindustani was used interchangeably with Hindi and Urdu in pre-colonial times.⁵¹ Where pre-colonial Hindi and Urdu existed somewhat synonymously under Hindustani, colonial governance sought to define and develop both Hindi and Urdu as distinct languages.⁵²

By tethering Hindustani to a failed empire, the British depleted its value in society. Under British rule Hindustani's Perso-Arabic influence became increasingly attributed to the foreign influence of Mughal Rule.⁵³ The demise of the Mughal Empire led to the British attribution of Islam with poverty, courtesans, and an illegitimate fallen empire.⁵⁴ Hindu scholars, under British supervision, eliminated these Perso-Arabic influences to curate modern-day Hindi.⁵⁵ The Hindustani still laced with Perso-Arabic influence became only Urdu.⁵⁶ As Urdu became associated with Islam, the same connotations became tethered to the language. It's inescapable ties to Mughal Rule—and therefore Islam—led the “syncretic” nature of Urdu to be replaced with a “distinct communal identity.”⁵⁷ The colonial division of Hindustani ignored the value it held as effective form of communication across religious groups in India.

The British bifurcation of Hindustani and subsequent advocacy for Hindi as the official language of India further incorporated Hinduism into the roots of

⁵⁰ HINDI NATIONALISM 12 (“[T]here is general agreement that some kind of *ur*-language emerged, combining diverse cultural influences, sometime in the first millennium.”).

⁵¹ See *id.* at 1-16.

⁵² *Id.* at 20.

⁵³ HINDI NATIONALISM, *supra* note 50, at 21-22 (describing language scholars in colonial India “excising ‘alien’ words from ‘the mixed Urdu language of Akbar’s camp-followers and of the market where men of all nations congregated.’”).

⁵⁴ HINDI NATIONALISM, *supra* note 94.

⁵⁵ *Id.* at 21-23.

⁵⁶ *Id.*

⁵⁷ *Id.* at 21-23, 61.

Indian identity and deepened the divide between religious groups. The perpetuation of a false narrative exacerbated tensions between the Hindus and Muslims. By blaming Muslims as the “authors” of the 1857 rebellion, the British facilitated the development of a political campaign for Hindi as an official language in government.⁵⁸ Under the British Raj Hindi did not become officially recognized as the language of India. But the campaign it sparked laid the foundation for Hindi’s recognition in the Constitution of an independent India and the Hindu nationalist movement. The degradation of the Muslim identity created an environment that promoted Hinduism by advocating for its place in the Indian identity. Painting Muslims as rebels and foreigners instilled a sense of otherness that supported the conflation of religious and political differences and subsequent development of Hindu and Muslim based political identities.

B. Personal Law

Personal law is a distinct body of law that governs marriage, adoption, inheritance, and similar family and property matters.⁵⁹ Personal law is unique because it is derived from religious practices and customs.⁶⁰ Individuals adhere to the personal law of their religious community.⁶¹ Personal law was brought to colonial India under British governance, alongside universal laws applying to other civil, criminal, and commercial matters.⁶²

The colonial imposition of personal law tethered religious affiliation to the national identity. The British codification of personal law materialized a permanent divide centered around religion. Initially governed with the assistance of indigenous peoples under the East India

⁵⁸ *Id.* at 35.

⁵⁹ Jeffrey A. Redding, *Dignity, Legal Pluralism, & Same-Sex Marriage*, 75 BROOK. L. REV. 791, 826 (2010) (describing legal pluralism and the concept of personal law).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See Seval Yildirim, *Expanding Secularism’s Scope: An Indian Case Study*, 52 AM. J. COMPAR. L. 901, 907 (2004) (describing when and how the British brought secular and personal law to India).

Company, the British Raj rejected the approach in favor of religious-based legal uniformity.⁶³ Despite the great variance in religious practices across British India, the British search for legal uniformity placed religious groups in legal communities without “[r]espect for the plurality of customs[.]”⁶⁴ Personal law became the “Islamization of Muslim law and Sanskritization of Hindu law.”⁶⁵ Religion became more rigidly defined and promoted the development of more distinct communal identities, failing to recognize the value of the diversity existing within any given religion.

The contrast in the approach to Muslim and Hindu personal law under the British Raj exemplify Hindu favoritism and a push against the Muslim identity. Muslim personal law was derived almost exclusively from immemorial customs that did not acknowledge the different sects and practices of modern-day Islam.⁶⁶ And as the British acquired greater access to Muslim religious texts, “the courts became *less* willing to hear what litigants had to say about their own customs.”⁶⁷ Denying to acknowledge modern practices in Islam different from the religious texts available to the British limited Muslims ability to advocate for and engage in their religious practices.

Hindu personal law was also in part derived from outdated religious text but the flexibility and tolerance towards Hinduism enabled reform under British governance.⁶⁸ The British Raj’s preference for the Hindu community may have also enabled more hands-on participation from Hindu elites in developing Hindu legal

⁶³ See Mallampalli, *supra* note 49, at 1044.

⁶⁴ *Id.*

⁶⁵ Yildirim, *supra* note 63, at 907, 908 (describing when and how the British brought secular and personal law to India).

⁶⁶ Although the British derived Muslim personal law from the *shari’a*, “significant numbers of Muslims in colonial India did not practice the *shari’a*[.]” Mallampalli, *supra* note 49, at 1055.

⁶⁷ *Id.* at 1045 (emphasis in original).

⁶⁸ “As the domain of Hinduism became increasingly vast, dynamic, varied, and inclusive, the domains of Muslim or Christian personal law became more fixed.” *Id.* at 1063-64.

structure.⁶⁹ And in contrast to courts ruling on Muslim law, courts facing contests to Hindu personal law showed a greater willingness to accept evidence on modern customs in administering the law.⁷⁰ This stark contrast from Muslim law enabled Hindus more control in the development and application of personal law.

Codifying religious practices strengthened religious divides and deepened the connection between religion and politics, a pathway for religion to become tethered to national identity. Entrusting the government to control and resolve religious disputes required individuals seeking to exercise certain religious practices to advocate to the government. The government's authority to define religious identity and practice through personal law inherently implicated religion and politics by strengthening communal identities through the imposition of uniform religious practices. The inequitable development of personal law evidences British favoritism. Providing flexibility and consistency for Hindu personal law strengthened Hinduism's role in the national identity and alienated the Muslim community in British India.

C. Census and Reservation

The reservation system is India's form of affirmative action. It has created a rigid system that does not appropriately account for the minority groups facing discrimination in India.⁷¹ Reservation provides historically minority groups representation in, among other things, the legislative branch of government based on a quota that

⁶⁹ KEAY, *supra* note 12, at 469 (describing the development of government noting "Hindu leaders appeared to be struggling not against the British, who had supposedly come to India as liberators, but against Muslim tyranny and misrule.").

⁷⁰ Mallampalli, *supra* note 49, at 1045.

⁷¹ See Jonathan Evans & Neha Saghal, *Key Findings About Religion in India*, PEW RSCH. CTR. (June 29, 2021), <https://www.pewresearch.org/short-reads/2021/06/29/key-findings-about-religion-in-india/>.

reflects representation in the population.⁷² As the British imposed census and reservation in India, the incorporation of caste categories in addition to race and religion created a pathway for Hindu dominance.⁷³ Continuing to define minority status by caste—without additionally accounting for the other social structures in India—limits the opportunity for religious representation.

The caste categories imposed by British governance “overlooked that caste had been a dynamic and mobile category of Indian society” incorporated across religious groups.⁷⁴ Rather, these categories permanently enshrined divides that were otherwise malleable within Indian society.⁷⁵ And caste categories acknowledged the complexities of Hindu society while denying the same recognition to other religious groups by collectively grouping “[n]on-Hindus.”⁷⁶ The focus on the Hindu form of caste set a precedent by affirming Hindus’ value in India under the British Raj.

This affirmative action scheme implemented based on aspects of Hindu society reinforced Hindus authority as the dominating group in India and instilled the sense of otherness faced by Muslims by placing greater value of Hinduism. This alienation is evidenced by the growth of Muslim separatism in response to their lack of representation and the imposition of a separate Muslim

⁷² See Laura Dudley Jenkins, *Race, Caste & Justice: Social Science Categories and Antidiscrimination Policies in India & the United States*, 36 CONN. L. REV. 747, 776-777 (2004) (describing how groups are accounted for to determine number of seats reserved also noting the reservation system is also used in employment and education.)

⁷³ The caste category was originally applied only to Hindus. “[T]he category of race was primarily included to account for Indians “to whom the terms like ‘caste’ and tribe are inapplicable[.]” Ram B. Bhagat, *Census & Caste Enumeration: British Legacy & Contemporary Practice in India*, 62 GENUS, no. 2, Apr. – June 2006, at 122.

⁷⁴ *Id.* at 122.

⁷⁵ “Often, [caste categories] did not present the way caste was actually organized in different parts of India and presented a view of the caste system based on the perception of outsiders and local elite.” *Id.* at 124.

⁷⁶ *Id.* at 125-26.

electorate.⁷⁷ As Muslims were continually denied representation and inappropriately grouped under one umbrella, in denial of the different sects of Islam, the Muslim identity gained strength. The Muslim separatist movement is evidence of their lack of recognition in the Indian identity. The inequitable divide-and-rule regime ultimately created religious identities so strong that religious and political ideologies became one and the same.

D. Separate Electorates

Establishing political groups defined by religious affiliation continued to tether religion to the national identity. In 1909, the British Raj established a separate electorate for Muslims who at the time comprised around 20% of the population.⁷⁸ Establishing separate political factions based on religious identity promoted the Muslim separatist movement and rise of Hindu nationalism.⁷⁹

Despite the fluid western approach to minority representation as a means to resolve conflicting interests and establish uniform law, the British encouraged and enabled Indian politics to represent communal interests.⁸⁰ The British establishment of a separate electorate for Muslim Indians suggested that Muslims “were more than a mere political minority and were, in fact, a distinct political entity[.]”⁸¹ This paved the way for the creation of the All India Muslim League in 1907, a political group furthering the Muslim separatist ideology that Muslim Indians required equal representation as a national

⁷⁷ See *infra* Section II(d).

⁷⁸ KEAY, *supra* note 12, at 469.

⁷⁹ *Id.* (attributing part of the tension between the Indian National Congress and All India Muslim League to the separate electorates); M.S. Rajan, *The Impact of British Rule in India*, 4 J. OF CONTEMP. HIST. 89, 94 (1969).

⁸⁰ See Farzana Shaikh, *Muslims & Political Representation in Colonial India: The Making of Pakistan*, 20 MOD. ASIAN STUD., 539, 543-544 (1986); KEAY, *supra* note 12, at 468-69.

⁸¹ Farzana Shaikh, *supra* note 80, at 546.

organization.⁸² Rather than remedying concern, the British implementation of separate electorates reaffirmed Muslim separatist ideologies and encouraged the narrative that Muslims are separate from the remainder of the Indian population, further sowing division between the religious groups in the country.

The political alignment of the other existing religious groups in India further isolated Indian Muslims. The Indian National Congress, while predominately Hindu, was a political group that supported by a majority of the existing religions in India and sought unanimity and a universal Indian identity.⁸³ The All-Muslim League directly conflicted with the Indian National Congress, the former seeking recognition as a distinct group and the latter seeking uniformity and unanimity. The divide between the All-Muslim League and Indian National Congress perpetuated the divide between Muslims and the rest of the population in India. Given the liberal nature of colonial westernization in contrast with the rigidity of Islamic values, religious ideologies became conflated with political demands as Muslims saw British rule as a threat to Muslim representation.⁸⁴ This direct conflict further demonstrates the conflict between British rule and Islam that supported British favoritism towards the Hindu majority.

E. Indo-Pak Partition of 1947

Britain's divided vision of India materialized through the Indo-Pak partition in 1947 and is accredited as one of the most "dramatic" political decisions to alter the

⁸² *Id.* at 546-48.

⁸³ *Id.* at 539. Despite the secular nature of the Indian National Congress, its Hindu dominated membership has led to the recognition of its role in invigorating the Hindu nationalist movement and favoring a government structure aligned with Hindu values. See generally Mark Bevir, *Theosophy & The Origins of The Indian National Congress*, 7 INT'L J. OF HINDU STUD., 99 (2003).

⁸⁴ Shaikh, *supra* note 81, at 546.

course of the twentieth century.⁸⁵ As World War II came to an end, Britain was unable to hold control over India.⁸⁶ The divide and rule regime proved to be uncontrollable as Hindus and Muslims furthered developed their separate political factions: The Indian National Congress (Hindu dominated) and the All-India Muslims League.⁸⁷ The British Parliament divided British India into two separate dominions—the secular Republic of India and Islamic Republic of Pakistan.⁸⁸ This marked the end of British occupancy in South Asia.⁸⁹

The stream of migration and religious violence following partition shed light on the extent to which religion and national identity intertwined. Considered one of the largest migrations known to man, nearly nine million Hindus and Sikhs migrated to India and six million

⁸⁵ Jeffrey Weiss, *India & Pakistan – A Cautionary Tale for Israel & Palestine*, 18 CONN. J. INT'L L. 455, 457 (Spring 2003). "It has been said that '[f]ew political decisions in the twentieth century have altered the course of history in a more dramatic fashion than the partition in India in 1947.'" Jeffrey Weiss, *India & Pakistan – A Cautionary Tale for Israel & Palestine*, 18 CONN. J. INT'L L. 455, 457 (Spring 2003).

⁸⁶ Kishala Srivastava, *The Future of India-Pakistan Relations: The Declining Role of Mediation Between These Rival States*, 34 OHIO STATE J. ON DISP. RESOL. 221, 223 (2019).

⁸⁷ *Id.*

⁸⁸ William Dalrymple, *The Great Divide*, THE NEW YORKER (June 22, 2015), <https://www.newyorker.com/magazine/2015/06/29/the-great-divide-books-dalrymple>. Pakistan was originally two separate land masses, east and west Pakistan. East Pakistan became the People's Republic of Bangladesh in 1971.

⁸⁹ *Partition: Why was British India Divided 75 Years Ago?*, BBC (Aug. 14, 2022, 7:58 EDT), <https://www.bbc.com/news/world-south-asia-62467438>.

Muslims migrated to Pakistan.⁹⁰ Muslims and Hindus migrated out of fear of religious prosecution.⁹¹ The scale at which this migration occurred demonstrates the distinct identities created under colonial influence and the demarcation of Muslims from the Indian identity in the eyes of Muslims and non-Muslims alike. The migration “mushroomed into an orgy of violence” leaving millions of Hindu and Muslim people dead or displaced.⁹² Communal violence occurred at a large scale and agitated the pre-existing tension between the Hindu and Muslim communities.⁹³ The Muslims’ and Hindus’ migrations clearly mark the religious nature of the partition and solidified some Hindus expectations that Muslims become associated with a Pakistani identity.

The religious-based partition left a slew of consequences still faced by the Muslim minority in India.⁹⁴ This assertion is reflected through modern day government practices which continue the pattern of religious discrimination and violence.

⁹⁰ Mushirul Hasan, *Partition Narratives*, 23 ORIENTE MODERNO, no. 1, 2004, at 103, 114; see Prashant Bharadwaj, et. al, *The Big March: Migratory Flows After the Partition of India*, 43 ECONOMIC & POLITICAL WEEKLY, no. 35, Aug. 30 – Sept. 5, 2008, at 39 (describing the migration as “one of the largest and most rapid migrations in human history with an estimated 14.5 million people migrating within four years”); see also Alex Shashkevich, *Stanford Scholar Explains the History of India's Partition, its Ongoing Effects Today*, STANFORD NEWS (Mar. 8, 2019), <https://news.stanford.edu/2019/03/08/partition-1947-continues-haunt-india-pakistan-stanford-scholar-says/>.

⁹¹ Srivastava, *supra* note 87, at 224.

⁹² Jeffrey Weiss, *India & Pakistan – A Cautionary Tale for Israel & Palestine*, 18 CONN. J. INT’L L. 455, 459 (Spring, 2003).

⁹³ See Srivastava, *supra* note 87, at 224.

⁹⁴ After the migration following the partition of India, 42 million Muslims remained in India. India is still home to one of the world’s largest Muslim populations with over 200 million Muslims. Weiss, *supra* note 93, at 461; see also Lindsey Maizland, *India’s Muslims: An Increasingly Marginalized Population*, COUNCIL ON FOREIGN RELS. (last updated July 14, 2022, 3:00 PM), <https://www.cfr.org/background/india-muslims-marginalized-population-bjp-modi> (describing the consequences of partition and issues faced by Muslims in India today).

III. COLONIAL LAWS PERSISTENT UNDER MODERN DAY GOVERNMENT

The British imposed separation of Muslim and Hindu groups remains prevalent in contemporary Indian government practices. The separation and violent partition that followed has led to discriminatory treatment towards the Muslim minority in India today.⁹⁵ To understand the role of government actors, it is important to first address the government structure of modern India.

While Pakistan was declared an Islamic Republic, India is recognized as a Sovereign Socialist *Secular* Democratic Republic with a Parliamentary form of government.⁹⁶ The government is made up of three branches: the executive, a parliament serving as the legislative, and judiciary.⁹⁷ The President is the constitutional head of government and is advised by a Council of Ministers, led by the Prime Minister.⁹⁸ However, the President and Vice President positions are largely nominal in nature, with most executive power given to the Prime Minister.⁹⁹

Even as a secular nation, religion is a driving force in politics and the democratic process.¹⁰⁰ Since 2014, the Bharatiya Janata Party (the “BJP”) has maintained control of the Indian government.¹⁰¹ The BJP is a Hindu Nationalist party guided by Hindutva—a political ideology

⁹⁵ “Ironically the only way in which the victims could come to terms with that violence was by *continuing* it.” HINDI NATIONALISM, 70.

⁹⁶ *Governance & Administration*, THE NAT'L PORTAL OF INDIA (last accessed Nov. 29, 2023), <https://www.india.gov.in/topics/governance-administration>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Bilal Kuchay, *India Ruling Party has No Muslim MP for The First Time in History*, AL JAZEERA (July 6, 2022), <https://www.aljazeera.com/news/2022/7/6/india-ruling-party-has-no-muslim-mp-for-the-first-time-in-history>.

¹⁰⁰ Srivastava, *supra* note 87, at 223.

¹⁰¹ Heather Holman, *A Reckoning for Religious Freedom: India's BJP & The International Implications of Anti-Muslim Leadership*, 38 AM. U. INT'L L. REV. 231, 234-35 (2023) (describing the BJP's rise to power in India).

that the Indian culture should be defined in terms of Hindu values.¹⁰² One of the goals of Hindutva is to make India a Hindu state, viewing “Hindus as the ‘only’ true Indians[.]”¹⁰³ Much of the BJP’s political platform is centered around anti-Muslim rhetoric and policy goals, viewing Muslims as foreigners.¹⁰⁴ The BJP’s agenda continues the orientalist approach to basing governance around religion.¹⁰⁵

The BJP stronghold over the Indian government enables the BJP to impose Hindutva at a large scale through government rhetoric and action and limit the freedoms of Indian Muslims. The Prime Minister of India, Narendra Modi, who holds the greatest authority over the executive branch, is a member of the BJP.¹⁰⁶ Not only is the executive branch led by the BJP, but it is also the

¹⁰² *Id.*

¹⁰³ *Id.* (citing Sudha Ramachandran, *Hindutva Violence in India*, 12 COUNTER TERRORIST TRENDS & ANALYSIS 15, 16 (June, 2020)); *see also*, Prashant Waikar, *Reading Islamophobia in Hindutva: An Analysis of Narendra Modi’s Political Discourse*, 4 ISLAMOPHOBIA STUDIES JOURNAL, no. 2, Spring 2018, at 161, 162 (“Hindutva thus envisions India to have always been a Hindu nation and perceives Islam and Muslims as an alien force which, through invasion and war, cause a seismic demographic shift to the detriment of the natural state of Hinduness in the subcontinent.”).

¹⁰⁴ *See* Amulya Ganguly, *BJP Preparing for Babri 2.0 by Targeting Varanasi Mosque and Keep the Communal Cauldron Boiling*, NAT’L HERALD INDIA (Apr. 12, 2021, 7:00PM), <https://www.nationalheraldindia.com/opinion/bjp-preparing-for-babri-20-by-targeting-varanasi-mosque-and-keep-the-communal-cauldron-boiling> (outlining the BJP’s electoral success premised on advocating for the destruction of the Muslim Babri Mosque); *see also* Naomi Barton, *10 Times When BJP Leaders (Not Fringe) Made Anti-Muslim Hate Speeches*, THE WIRE (June 6, 2022), <https://thewire.in/communalism/bjp-leaders-fringe-anti-muslim-remarks-gulf-countries>; Waikar, *supra* note 102 (outlining how BJP rhetoric articulates Islamophobia).

¹⁰⁵ Bagchi, *supra* note 42, at 283 (“And last, but very importantly, German Orientalism generated ideas that resemble very closely those espoused by . . . the proponents of Hindu nationalism in India.”)

¹⁰⁶ *Know the PM*, PM INDIA (last accessed Nov. 29, 2023), <https://www.pmindia.gov.in/en/pms-profile/>.

controlling party in the Indian Parliament.¹⁰⁷ The BJP's expansive authority within the Indian government reaffirms the Hindu role and value in Indian government and society.

At a fundamental level, the BJP as the ruling party in India imposes Hindu beliefs and values onto Indian society.¹⁰⁸ Through religious partition, the Indian government has since repeatedly declined to account for the Muslim minority in India—focusing on the furtherance of a Hindu state and discriminating against the Muslim minority. Many structures imposed as part of the British divide-and-rule regime persist in modern day India and with it the furtherance of communal identities. Examples of this will be discussed further below.

A. Language

The codification of Hindi as the official language of India necessarily isolates the Muslim community by continuing to tether Hinduism to the Indian identity. As an independent nation, Hindi is constitutionally recognized as the official language of India alongside English, which still integral to government function.¹⁰⁹ The Constitution not only names Hindi as the official language of India but grants the President the authority to establish a Commission to promote the use of Hindi and restrict the use of English or other languages as much as deemed

¹⁰⁷ Of the approximately 800 seats that make up both houses of Indian Parliament, the BJP holds approximately 400 seats. The remainder of the seats are divided among over 20 rival parties. Their closest rival is the Indian National Congress, holding approximately 80 total seats. *See List of Members*, under *Statistical Information*, RAJYA SABHA COUNCIL OF STATES, <https://sansad.in/rs/members> (last accessed Feb. 13, 2024); *List of Members*, under *Statistical Information*, LOK SABHA HOUSE OF THE PEOPLE, <https://sansad.in/l/members> (last accessed Feb. 13, 2024).

¹⁰⁸ Nehal Sahgal et al., *Religion in India: Tolerance & Segregation*, PEW RSCH. CTR. (June 29, 2021), <https://www.pewresearch.org/religion/2021/06/29/religion-in-india-tolerance-and-segregation/>.

¹⁰⁹ *See* India Const. pt. XVII, art. 343 (Official Language).

necessary.¹¹⁰ This article of the Constitution grants the government the authority to impose Hindi—which due to British governance is linked to Hinduism—at a level that places Hindi at a higher value than any other prominent language in India.

The government's continued push for the use of Hindi across the country alienates non-Hindi speakers. Even though less than half the population speaks Hindi, the BJP has pushed to mandate Hindi in the school system.¹¹¹ This push shows the continued agenda to mark Hinduism as an integral component of the Indian identity. Hindi's association with the national identity has led approximately 60% of Hindus to consider speaking Hindi critical to the Indian identity.¹¹² Hindi's continued integration into the national identity furthers Hinduism's role in Indian society and government.

In contrast, Urdu's value—linked to Islam through colonial influence—is degraded by the government. In 2020, the Indian government replaced the signs written in Urdu at trains stations in a province of India with Sanskrit, arguably Hindi's forefather and the language most Hindu scripture is written in.¹¹³ This denies the value of Urdu to the population of that region, even though Urdu

¹¹⁰ See India Const. pt. XVII, art. 344 (Commission and Committee of Parliament on Official Language). However, English is still integral in Indian government. This is a result of westernization and pushback from States in southern India who do not speak Hindi and prefer English. See *Language Provisions in the Constitution of the Indian Union*, UNIV. OTTAWA (last accessed Nov. 29, 2023), <https://www.uottawa.ca/clmc/your-rights>.

¹¹¹ Tarun Timalisina, *Redefining Colonial Legacies: India & the English Language*, HARVARD POL., (last accessed Feb. 13, 2024), <https://harvardpolitics.com/redefining-colonial-legacies-india-and-the-english-language/>.

¹¹² Jonathan Evans, *In India, Hindu Support for Modi's Party Varies by Region & is Tied to Beliefs About Diet & Language*, PEW RSCH. CTR. (Aug. 5, 2021), <https://www.pewresearch.org/short-reads/2021/08/05/in-india-hindu-support-for-modis-party-varies-by-region-and-is-tied-to-beliefs-about-diet-and-language/>.

¹¹³ Tawqeer Hussain, *Sanskrit to Replace Urdu on Railway Signboards in Uttarakhand*, AL JAZEERA (Jan. 21, 2020), <https://www.aljazeera.com/news/2020/1/21/sanskrit-to-replace-urdu-on-railway-signboards-in-uttarakhand>.

is listed as one of the prominent languages in the region—not Sanskrit.¹¹⁴ And although Sanskrit is spoken by less than 0.002% of the *entire* population, replacing Urdu signs with Sanskrit evidences Sanskrit's apparent value to the government, and the lack of value that Urdu is given by the government.¹¹⁵ This is not the only instance that things attributed to Islam, falsely attributed through British influence, were replaced in favor of something arguably more “Hindu.” The Indian government has at many times replaced names of cities given by Muslim rulers, writings on signs, and other things depicted in Urdu in favor of something more Hindu or considered more Indian by the BJP's government.¹¹⁶ Through even seemingly minor changes, this isolation fosters a sense of alienation from the rest of the Indian community. By eliminating Urdu from aspects of daily life in India, the Indian government forcibly depletes its value and with it isolates its speakers.

This push for Hindi parallels the British acceptance of Hindi in favor of Urdu in colonial India.¹¹⁷ The intended effect was similar, following the demise of the Mughal Empire Hindi was recognized as simple and virtuous while Urdu was viewed as alien in nature.¹¹⁸ These narratives enforced by the British persist through the continued efforts to assimilate Hindi into the population while simultaneously eradicating traces of Urdu from daily life. The inaccurate depiction of Urdu as a foreign language tethered to the Muslim community subjects Muslims and

¹¹⁴ 4. *Indian States & Multilingualism* in *Click Here to Know More About Indian Languages on Language Education*, at 4, MINISTRY OF EDUC. GOV'T OF INDIA, https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/languagebr.pdf (last accessed Mar. 24, 2024) (referring to statistic for U.P.).

¹¹⁵ *See Only 24,821 People in India Have Sanskrit as Mother Tongue: Govt Data*, CNBC TV18 (Sept. 28, 2022, 3:14 PM), <https://www.cnbtv18.com/india/only-24821-people-in-india-have-sanskrit-as-mother-tongue-govt-data-14819891.htm>.

¹¹⁶ Hussain, *supra* note 114.

¹¹⁷ *See supra* Section II(a).

¹¹⁸ The fatal flaw to this argument however, unbeknownst to the British at the time, is that Urdu was actually developed in India. HINDI NATIONALISM, *supra* note 50, at 71.

any Urdu speaker in India to a sense of otherness and alienates them from the Indian identity.¹¹⁹

B. Personal Laws

The preservation of a personal law system while eliminating religious minority representation in legislature perpetuates the problem of religious tension and divide.¹²⁰ As an independent nation, India's continued the practice of personal law and, to an extent, codified it.¹²¹ The inequitable codification and application of personal law as an independent nation strengthens Hinduism's role in the national identity. India's codification of personal law imperils the Muslim minority by continuing a practice that hinders the ability to create a universal Indian identity.¹²²

The discrepancies between codifying Muslim and Hindu personal law post-independence closely resemble the government practices governing colonial personal law

¹¹⁹ A linguist in India has openly voiced his concerns about the impact of the sense of otherness faced by Urdu speakers in India, stating that "When the [2021] census takes place, my fear is that many speakers of Urdu might simply report Hindi as their mother tongue. There is a fear perception among Urdu speakers of getting identified as Muslims though Urdu is not a language of Muslims[.]" Bilal Kuchay, *Hate Campaign in India Against Urdu for Being a 'Muslim' Language*, AL JAZEERA (Oct. 27, 2021), <https://www.aljazeera.com/news/2021/10/27/india-urdu-hindu-groups-hate-campaign-muslim-language-fabindia>.

¹²⁰ See *infra* Section III.C.

¹²¹ Marc Galanter & Jayant Krishnan, *Personal Law & Human Rights in India & Israel*, 34 ISR. L. REV. 101, 106-08 (2000).

¹²² There is a suggestion to create a Uniform Civil Code, a personal law to apply to all citizens regardless of religion, authorized by the Constitution. See India Const. art. 44. While in theory this Code could encourage this universal identity and uniformity, it is heavily debated that it will become a method to instead impose Hindu personal laws onto Indian citizens—given the BJP's strength in government. See Krishn Kaushik, *Explainer: What is India's Civil Code & Why Does It Anger Muslims?*, REUTERS (Feb. 7, 2024, 8:24 AM), <https://www.reuters.com/world/india/what-is-indias-civil-code-why-does-it-anger-muslims-2024-02-07/>. While the criticisms of the Code are realistic ones, finding a pathway to create a truly secular Code could alleviate some of the inequities within the personal law system.

under the British Raj.¹²³ The parallels between the implementation and enforcement of colonial and modern personal law in India exemplify the continued incorporation of Hinduism into the national identity and alienation of the Muslim population in India. Within the 10 years following India's independence, Hindu personal law was codified into four separate bills providing detail and structure to ensure administrative and judicial clarity.¹²⁴ Hindu citizens are provided guidance through codified laws to ensure compliance with the law, and these efforts evidence the value of developing Hindu law to the Indian government.

Meanwhile, Muslim personal law in India remains largely declaratory—enacted in 1937 under the British Raj—and was not majorly codified after India's independence.¹²⁵ Instead, it grants courts overbroad authority to administer uncoded and undefined law.¹²⁶ And the judges are generally trained in Western common-law rather than religious law—lacking the expertise to properly adjudicate disputes.¹²⁷ As a result, the Muslim population lack the safety within the personal law system

¹²³ See also Rena Verma Williams, *Post Colonial Politics & Personal Laws*, 98 (Oxford Univ. Press 2006).

¹²⁴ *Id.*; see Hindu Adoptions & Maintenance Act, 1956 (India); Hindu Minority & Guardianship Act, 1956 (India); Hindu Succession Act, 1956 (India); Hindu Marriage Act, 1955 (India).

¹²⁵ See The Muslim Personal Law (Shariat) Application Act, 1937 (stating simply “the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (*Shariat*).”); Ibn Khaldun Bharati, *Muslim Personal Law is an Embarrassment. Adapt it to Modern Life—Marriage, Divorce, Adoption*, THE PRINT (April 4, 2023, 9:00 AM), <https://theprint.in/opinion/muslim-personal-law-is-an-embarrassment-adapt-it-to-modern-life-marriage-divorce-adoption/1494440/>.

¹²⁶ See Bharati, *supra* note 126. See generally Narendra Subramanian, *Legal Change & Gender Inequality: Changes in Muslim Family Law in India*, 33 L. & SOC. INQUIRY 631, 643 (2008) (“[The courts] had particularly great autonomy in the adjudication of Muslim law cases because of the limited codification of Muslim Law.”).

¹²⁷ Subramanian, *supra* note 126, at 636.

often afforded to their Hindu counterparts.¹²⁸ Similarly, the courts use of anti-Muslim rhetoric exemplifies the purging of the Muslim identity from India.¹²⁹ Denying Muslims administrative clarity and openly opposing Muslim's place in India signals the lack of justice afforded to Muslim personal law claims in the courts. This negative opinion of Muslims expressed within the judiciary limits the successful advocacy for Muslim religious practices.

At the state level, anti-conversion laws likewise interfere with individuals' religious freedom based on conservative Hindu conspiracy theories.¹³⁰ The 'love-jihad'

¹²⁸ Sylvia Vatuk, "Where Will She Go? What Will She Do?" *Paternalism Toward Women in the Administration of Muslim Personal Law in Contemporary India*, in RELIGION & PERSONAL L. IN SECULAR INDIA: A CALL TO JUDGMENT, at 226, 240 (Gerald James Larson ed., 2001) (discussing personal law governing matrimonial disputes and finding that "even in situations where [Muslims] have the same opportunity to obtain relief under the law, Muslims are less likely to do so than Hindus or Christians"). *Compare* Mudgal v. Union of India, AIR 1995 SC 1531, (1995) (India) (finding that the second marriage of a Hindu man after 'fraudulent' conversion to Islam violated Hindu personal law, even though the it is accepted under Islam), *with* Shayara Bano v. Union of India, AIR 2017 SC 4609 (India), available at <https://indiankanoon.org/doc/115701246/>, (finding Muslim personal law allowing a husband to divorce his wife by saying 'talaq' three times unconstitutional, even though the practice is still a part of modern Islamic life). While the *Bano* ruling strikes down Muslim personal law, it celebrates a victory for gender justice. See Katelyn L. Dryden, *Note: India's Highest Court Strikes Instant Divorce Law Available to Husbands Only – Previously Protected by Personal Law*, 44 N.C.J. INT'L L. 85, 88 (Winter 2018) ("The intersection of competing rights--religion and gender equality--has drawn criticism from many different interested parties across the spectrum of advocacy.").

¹²⁹ Mudgal v. Union of India, AIR 1995 SC 1531, at 1543 (1995) (India) ("Those who preferred to remain in India after the partition, fully knew that the Indian leaders did not believe in a two-nation or three-nation theory and that in the Indian Republic there was to be only one Nation—Indian nation—and no community could claim to remain a separate entity on the basis of religion.").

¹³⁰ See generally Vrinda Narain, *What's Love Got to Do With It? Anti-Love Jihad Laws & The Othering of Muslims in India*, 30 UCLA J. OF GENDER & L. 167 (2023); Lauren Frayer, *In India, Boy Meets Girl, Proposes—and Gets Accused of Jihad*, NPR (Oct. 10, 2021, 7:00 AM), <https://www.npr.org/2021/10/10/1041105988/india-muslim-hindu-interfaith-wedding-conversion>.

conspiracy theory is that, at a large scale, Muslim men intentionally woo Hindu women to marry and convert them to Islam.¹³¹ This theory is codified as numerous states in India have enacted anti-conversion laws that criminalize the conversion of one religion to another for marriage or by marriage.¹³² In practice, 'love-jihad' laws are inequitably applied in the prosecution of Muslim men, reinforcing their marginalization within Indian society.¹³³ While interfaith marriages face broad social disapproval in India, anti-conversion laws go further by criminalizing religious syncretism and enabling state-sanctioned religious division.¹³⁴ This legislative framework perpetuates historical divide-and-rule tactics that enables government actors to continue to cast Muslims as threatening outsiders in Indian society.¹³⁵

¹³¹ Yash Sharma & Laura Dudley Jenkins, *Legislation as Disinformation: The Love Jihad Conspiracy Theory in Law & Lived Experience*, 33(5) SOC. & LEGAL STUDIES, 767 (2024).

¹³² See, e.g., The Haryana Prevention of Unlawful Conversion of Religion Act (2022) (India).

¹³³ Tariq Ahmad, *FALQs: The Controversy Over Marriage & Anti-Conversion Laws in India*, LIBR. OF CONG. BLOGS (Mar. 25, 2021), <https://blogs.loc.gov/law/2021/03/falqs-the-controversy-over-marriage-and-anti-conversion-laws-in-india/> (finding in one state "[a]ccording to a news report, as of mid-January 2021, 91 persons had cases filed against them and 54 were arrested so far, an overwhelming majority of them Muslims[.]"); See also Luke Wilson, *Issue Update: India's State-level Anti-conversion Laws*, U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (Mar. 2023), <https://www.uscirlf.gov/sites/default/files/2023%20India%20Apostasy%20Issue%20Update.pdf> ("India's enforcement of state-level anti-conversion laws suggest the legislations' intent is to prevent conversions to disfavored religions—such as Christianity and Islam—and not to protect against coerced conversions.").

¹³⁴ American government actors have gone as far as criticizing these 'love-jihad' laws as alleged violations of international human rights laws. Luke Wilson, *Issue Update: India's State-level Anti-conversion Laws*, U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (Mar. 2023), <https://www.uscirlf.gov/sites/default/files/2023%20India%20Apostasy%20Issue%20Update.pdf>.

¹³⁵ See *supra* Section II.

C. Reservation

Continued implementation of the Reservation system, an affirmative action scheme tailored to the Hindu caste system, alienates Muslims by denying equitable representation in government and society. The elimination of religion-based reservation further integrates Hinduism into the Indian identity and alienates the Muslim minority. Enforcing an affirmative action scheme derived from Hindu social norms denies the Muslim population equitable representation in government and alienates Muslims by limiting their available forums of advocacy.¹³⁶ Limiting the available methods for Muslims to advocate to the government silences Muslim interests and discredits Muslim perspectives in society.

The reservation system, India's affirmative action scheme, was codified in the Constitution.¹³⁷ While the reservation systems codified in Pakistan and Bangladesh continue to allow religious classification, the reservation system codified in the India Constitution eliminated the inclusion of religious groups, which nationalists blamed for worsening religious tensions.¹³⁸ Thus, the reservation system shifted from minority representation to a more targeted focus on minority *caste* representation, limited to members of a Scheduled Caste, Scheduled Tribe, or Other

¹³⁶ Shalina A. Chibber, Note, *Charting a New Path Toward Gender Equality in India: From Religious Personal Laws to a Uniform Civil Code*, 83 IND. L.J. 695, 699 (2008) ("the Muslim community was [by losing their inclusion in reservations,] essentially sacrificing its legislative power in hopes of securing at least its religious political power.").

¹³⁷ See India Const.

¹³⁸ Chibber, *supra* note 137; Ram B. Bhagat, *Census & Caste Enumeration: British Legacy & Contemporary Practice in India*, 62 GENUS, no. 2, at 119, 128 (2006).

Backwards Caste.¹³⁹ A person's caste is determined by their social status and, while overtime it has emerged in other religious groups, is originally derived from Hindu social constructs.¹⁴⁰ The shortfall of the reservation system under Indian governance is its failure to account for many members of the Indian Muslim community among other religious minorities.

Indians who do qualify for the lower caste systems that are subject to the reservation system are reported to not experience widespread discrimination.¹⁴¹ This undermines the value of the reservation system and its intent. Intended to be malleable and temporary, the reservation system holds little value as it remains stagnant and fails to account for a large portion of the population that reportedly face discrimination.

Muslim individuals are excluded from the Scheduled Caste category in India's Constitution unless they fall under a Caste explicitly included under Scheduled Castes by the President.¹⁴² So unless the President says otherwise, Muslims are denied status as a Scheduled Caste because caste is *theoretically* not a part of Muslim religion.¹⁴³ This overlooks the development of the caste system in colonial

¹³⁹ See India Const. pt. XVI; Simonne Kapadia, *A Comparison of The Reservation System in India to Affirmative Action Policies in The United States*, MICH. STATE U. INT'L L. REV. (Mar. 22, 2021), <https://www.msuilr.org/new-blog/2021/3/22/a-comparison-of-the-reservation-system-in-india-to-affirmative-action-policies-in-the-united-states> ("Scheduled Castes include the Dalit caste, a group previously known as the 'untouchables,' who have faced high levels of discrimination. The Scheduled Tribes include groups living in remote areas of India and Other Backward Castes includes a broader, less well-defined grouping of people."); "Caste" refers to the strictly regulated social group that one is born into in India. BRITANNICA, <https://www.britannica.com/place/India/Caste> (last visited Feb. 13, 2024). Caste is initially determined by occupation and then passed down to descendants. *Id.* People are expected to marry and interact with people who share the same caste. *Id.*

¹⁴⁰ Bhagat, *supra* note 139, at 120.

¹⁴¹ Sahgal, *supra* note 109.

¹⁴² Ministry of Law, Constitution (Scheduled Castes) Order, S.R.O.

385 (Issued on Aug. 10, 1950) accessed at <https://socialjustice.gov.in/public/ckeditor/upload/97321692251201.pd>.

¹⁴³ Bhagat, *supra* note 139, at 128-29.

India as the British affirmatively worked to include religion in caste considerations.¹⁴⁴ As a result, the many members of the Muslim community may only qualify for the reservation system through Scheduled Tribe or Other Backward Caste status. The expansive and open nature of the Scheduled Tribe and Other Backward Caste categories severely impede Muslims chances of selection for representation in these categories.¹⁴⁵ Collectively grouping Muslims with other religious groups who fall under any given caste further depletes the Muslim voice in government. Instead, Muslims must compete with other religious groups and caste-based interests within their given caste category to be afforded representation.¹⁴⁶ The result leaves Muslims to make up a disproportionate majority of the General Castes that do not qualify for the reservation system.¹⁴⁷ This exclusion of the majority of Muslims from the reservation system effectively denies

¹⁴⁴ See *supra* Section II(c).

¹⁴⁵ Faizan Mustafa & Jagteshwar Singh Sohi, *Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy*, 2017 BYU L. REV. 915, 944 (2017).

¹⁴⁶ Some states in India have created separate Muslim representation criteria within their state reservations systems; evidencing the failure of the current caste categories to afford Muslim's representation. See, e.g., Tamil Nadu Backward Class Christians and Backward Class Muslims (Reservation of Seats in Educational Institutions including Private Educational Institutions and of Appointments or posts in the Services under the State) Act. (Nov. 5, 2007) available at https://www.indiacode.nic.in/bitstream/123456789/13265/1/act_no._33_of_2007.pdf.

¹⁴⁷ *Religion in India: Tolerance & Segregation – 4. Attitudes About Caste*, PEW RSCH. CTR. (June 29, 2021), <https://www.pewresearch.org/religion/2021/06/29/attitudes-about-caste/>, (“Muslims and Sikhs – like Jains – are more likely than Hindus to belong to general Category castes.”).

their claims of discrimination and right to equitable representation in government.¹⁴⁸

The expression exclusion of Muslims from Scheduled Castes suggests that Muslims do not belong in the affirmative action scheme and alienates the community by denying the country's largest minority group government representation. Similarly, a citizen can lose their Scheduled Caste status if they convert to a religion excluded from Scheduled Castes, specifically Christianity or Islam.¹⁴⁹ Revoking a citizen's right to affirmative action because of a change in religious affiliation without change in social status suggests that individuals converting to Islam no longer deserve the right to affirmative representation. Thus, individuals are punished solely for following Islam.¹⁵⁰

The role of religion in politics, which has integrated religious groups into government structure, necessitates the introduction of religious representation in the

¹⁴⁸ Despite their calls to add Muslim as its own grouping in the reservation system, the current Indian government has expressly denied the possibility at the federal level. Rimjhim Singh, *Will Not Let Reservation be Given to Muslims as Long as I Am Alive: PM Modi*, BUSINESS STANDARD (May 10, 2024), https://www.business-standard.com/elections/lok-sabha-election/will-not-let-reservation-be-given-to-muslims-as-long-as-i-m-alive-pm-modi-124051000491_1.html.

¹⁴⁹ Even though caste is inherited and based on social status, not religion, right to Scheduled Caste can be revoked on the basis of religious conversion. See, e.g., *S. Swvigaradoss v. Zonal Manager*, F.C.I., 3 SCC 100 (India 1996) (finding that a Christian could not qualify for Scheduled Caste status even though his parents were originally Hindus in a Scheduled Caste); *Soosai v. Union of India*, 1986 AIR 733 (India 1986) (permitting the denial of welfare benefits because the Hindu who was a member of a Scheduled Caste converted to Christianity).

¹⁵⁰ David M. Smolin, *Exporting the First Amendment?: Evangelism, Proselytism, and the International Religious Freedom Act*, 31 CUMB. L. REV. 685, 703-05 (2000/2001) (describing the implications of religious conversion of rights and status in India). See, e.g., *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 (finding that a woman lost her status as a scheduled caste and right to participation in the reservation system because of her decision to convert to Christianity).

reservation system. The role of religion and politics have conflated throughout India's history and as a result political groups often are controlled or defined to some extent by religious identity. And explored in Section IV, the control of the BJP has incorporated Hindu values into law and policy, which harms Muslims and other religious minorities in the country.¹⁵¹ Scholars often argue that India cannot remain secular given the strong role of religion in government.¹⁵² But, India can attempt to remedy the inequitable religious representation by incorporating a distinct place in the reservation system for minority religious groups proportional to their percentage of the population.

The reservation scheme mandates the recognition of caste identity in politics. Recognition of religious identity, a right enshrined in the Constitution but arguably denied in practice, is purely based on the success of voluntary religious-based political groups. Depleting the options for advocacy isolates Muslims and leads to a forced reliance on non-Muslim government leaders to protect Muslim interests. The continued practice of addressing only *caste* through the reservation system silences the interests of minority religious groups in India by denying them the opportunity to advocate and express their interests.

IV. MODERN LAW AND ACTION WITH DISCRIMINATORY IMPACT

New laws and government practices as an independent nation continue a system of inequality by restricting Muslims' ability to exist and exercise their rights in India. The furtherance of a Hindu nationalist agenda continues to implant Hindu values into government policy and agenda to dictate daily life. The strength of the BJP acting in tandem with pre-existing religious tension exacerbates Hindus animosity towards

¹⁵¹ See *infra* Section IV.

¹⁵² See, e.g., Brenda Cossman & Ratna Kapur, *Secularism's Last Sigh?: The Hindu Right, the Courts, and India's Struggle for Democracy*, 38 HARV. INT'L L.J. 113 (Winter 1997).

Muslims in India. By looking to the laws enacted, the methods of enforcement, and the countries response, the persevering communal identities implanted by British governance remain apparent.

A. Bovine Slaughter Laws

A majority of Indian states have enacted laws against the slaughter and sale of cows.¹⁵³ While it is attributed to cows' necessity to rural livelihoods, cows are considered sacred in the Hindu religion.¹⁵⁴ These laws were largely advocated for and enforced by the Hindu nationalist BJP.¹⁵⁵ Some BJP members go as far as suggesting Muslims who want to eat cow meat "can go to Pakistan," a rhetoric reinforcing the otherness faced by the Muslim community.¹⁵⁶ A disproportionate number of Muslims are

¹⁵³ "[T]wenty-six out of twenty-nine Indian states have had [bovine slaughter] laws for decades, and slaughter has been banned since 1976." Faizan Mustafe & Jagteshwar Singh Sohi, *Freedom of Religion in India: Current Issues & Supreme Court Acting as Clergy*, 2017 B.Y.U.L. REV. 915, 946 (2017). To be clear, bovine slaughter laws are state laws and have not been enacted at a national level. However, the Environment Ministry, led by the BJP, attempted to do so but were blocked by the Supreme Court of India. See Shakeeb Asrar, *India Suspend Ban on Trade of Cattle for Slaughter*, AL JAZEERA (July 11, 2017), <https://www.aljazeera.com/features/2017/7/11/india-suspends-ban-on-trade-of-cattle-for-slaughter>.

¹⁵⁴ Yet, there is some evidence that in ancient India Hindus consumed beef. *Id.* at n.139.

¹⁵⁵ *Id.* at 946-948 ("the BJP government has made amendments providing harsher punishment for possession of beef. . . [and] Hindutva forces have created anti-Muslim sentiment related to cow slaughter"). The BJP also describes the practice of protecting cows as an "Indian tradition" rather than a Hindu one. *BJP Workers Protest Against Congress Govt.'s Decision to Restrict Free Power & Proposal to Withdraw Anti-Cow Slaughter Law*, THE HINDU (June 5, 2023, 9:07 PM), <https://www.thehindu.com/news/national/karnataka/bjp-workers-protest-against-congress-govts-decision-to-restrict-free-power-and-proposal-to-withdraw-anti-cow-slaughter-law/article66933510.ece>. This rhetoric enforces the theory that Hinduism has become inherently tethered to being Indian.

¹⁵⁶ *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>.

persecuted for possessing or consuming beef despite the fact that a majority of Indians are not vegetarian.¹⁵⁷ The anti-Muslim rhetoric and high concentration of persecution directed at Muslims orchestrated by government actors imbue a false narrative that Muslims are criminals for their lifestyle choices. This narrative, which takes root in society, makes it dangerous for some Muslims to engage in daily life in India.

In society, Muslims are alienated by their villages and local communities because of their acceptance of beef consumption.¹⁵⁸ A disproportionate number of Muslims are murdered in mob attacks for consuming and selling beef.¹⁵⁹ Some Muslims are murdered without proof of slaughtering cattle. As recently as 2017, a Muslim dairy farmer was beaten to death by a lynch mob while transporting live cattle home from market.¹⁶⁰ In a nationally televised video, mob members are seen beating the man to death in the street, screaming that “he was planning to slaughter the cattle for beef.”¹⁶¹ Local government even placed blame on the victims, praising the attackers for their “cow

¹⁵⁷ *2022 Report on International Religious Freedom: India*, Section I on *Religious Demography*, U.S. DEPT. OF STATE, <https://www.state.gov/reports/2022-report-on-international-religious-freedom/india/#:~:text=The%20World%20Religion%20Database%20estimates,%3B%20and%20Sikhs%2C%201.8%20percent> (last accessed Feb. 26, 2024) (“The ban mostly affects Muslims and members of Scheduled Castes and Scheduled Tribes that traditionally consume beef.”).

¹⁵⁸ *See India: ‘Cow Protection’ Spurs Vigilante Violence*, HUM. RTS. WATCH (Apr. 27, 2017 10:04 AM), <https://www.hrw.org/news/2017/04/27/india-cow-protection-spurs-vigilante-violence>.

¹⁵⁹ *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> (“Between May 2015 and December 2018, at least 44 people—36 of them Muslims—were killed across 12 Indian states.”).

¹⁶⁰ Zeba Siddiqui et al., *Emboldened by Modi’s Ascent, India’s Cow Vigilantes Deny Muslims Their Livelihood*, REUTERS (Nov. 6, 2017, 12:00 PM).

¹⁶¹ *Id.*

protection.”¹⁶² Despite the fact that the farmer did not intend to slaughter the cows, and the fact that the assailants were caught on video, none were criminally charged.¹⁶³ The lack of urgency to pursue justice for victims of mob attacks condones anti-Muslim violence by failing to hold assailants liable for their actions.

Courts have placed a heightened level of importance on the Hindu values behind bovine slaughter laws, at times limiting Muslims ability to engage in religious practices within India. For example, in *Quareshi v. State of Bihar*, the Supreme Court of India upheld a law prohibiting cow slaughter.¹⁶⁴ The plaintiffs, Muslim butchers, argued it violated their religious right to sacrifice a cow on Bakr Id, a Muslim holiday.¹⁶⁵ The court upheld the law because, they reasoned, the slaughter was not a mandatory requirement for participating in the Muslim holiday.¹⁶⁶ In effect, Hinduism’s prohibition on cow slaughter and consumption superseded the Muslim interest in freedom to engage in religious practices of their choosing. Placing more importance on a Hindu practice than Muslim limits Muslims ability to engage in religious practices in their own country. Muslim exposure to criminalization for certain aspects of religious participation based on Hindu values, the law draws a clear line by emphasizing the importance of Hinduism to the Indian identity. Criminalizing Muslim practices denies Muslims the ability to fully express their religious identity in India in favor of supporting the Hindu identity.

¹⁶² Harsha Kumari Singh, et al., *Man Killed By Alleged Cow Vigilantes, Both Sides Guilty, Says Minister*, NDTV (updated Apr. 6, 2017), <https://www.ndtv.com/india-news/man-killed-by-alleged-cow-vigilantes-in-rajasthan-attack-caught-on-camera-1677453>.

¹⁶³ Mayank Bhardwaj, *Indian Court Acquits 6 of Killing Muslim Dairy Farmer in Cow Vigilante Case*, REUTERS (Aug. 14, 2019 1:27 PM). See generally India: ‘Cow Protection’ Spurs Vigilante Violence, HUM. RTS. WATCH (Apr. 27, 2017 10:04 AM), <https://www.hrw.org/news/2017/04/27/india-cow-protection-spurs-vigilante-violence>.

¹⁶⁴ *M.H. Quareshi v. State of Bihar*, 1959 SCR 629 (1959), available at <https://indiankanon.org/doc/93885/>.

¹⁶⁵ *Id.* at 649-651.

¹⁶⁶ *Id.*

B. The National Register of Citizens

Religious partition has been a source of justification for the codification of citizenship laws seemingly aimed at decreasing the Muslim population in India. Moreover, government rhetoric facilitates discriminatory violence in communities in response to such laws.¹⁶⁷ For example, the National Register of Citizens (NRC) requires every person who self-identifies as an Indian citizen to provide documentation to prove their citizenship.¹⁶⁸ Those who fail to provide the required documentation are subject to deregistration.¹⁶⁹ The NRC explicitly discriminates against members of the Muslim community with the goal of weeding out “infiltrators” destined for detention camps and potential deportation.”¹⁷⁰ And the BJP’s anti-Muslim practices continue as the PM Modi has declared the intent to deport illegal Muslims while allowing illegal Hindus to remain in the country.¹⁷¹ This anti-Muslim government action invigorates the Hindu majority view that Muslims are outsiders and “non-Indians” who do not have a place in India.

The aims of the NRC were expanded by the Citizenship Amendment Act (CAA), enacted to provide quicker methods of citizenship to migrants.¹⁷² It provides fast tracked citizenship for Hindus, Jains, Sikhs, Parsis,

¹⁶⁷ A BJP member of Parliament referred to a Muslim member as a “terrorist” and “pimp” during a session in Parliament. Faisal. Meer, *Muslim MP Called ‘Terrorist, Pimp’ by BJP Member Inside India’s Parliament*, AL JAZEERA (Sept. 22, 2023), <https://www.aljazeera.com/news/2023/9/22/muslim-mp-called-terrorist-pimp-by-bjp-member-inside-indian-parliament>.

¹⁶⁸ Rashida Richardson & Amba Kak, *Suspect Development Systems: Databasing Marginality & Enforcing Discipline*, 55 U. MICH. J. L. REFORM 813, 869 (Summer 2022).

¹⁶⁹ The Citizenship Act (1955) §10 (India).

¹⁷⁰ Richardson, *supra* note 165.

¹⁷¹ Soutik Biswas, *What Happens to India’s Four Million ‘Stateless’ People?*, BBC (July 30, 2018), <https://www.bbc.com/news/world-asia-india-45002670>.

¹⁷² The Citizenship (Amendment) Bill, 2019, Bill No. 370 of 2019 (Dec. 4, 2019) (India).

Buddhist, and Christians who are migrating from neighboring Muslim majority nations.¹⁷³ The key aspect of the CAA is the exclusion of the Muslim community by only encouraging and providing citizenship for other religious groups. The contrast between welcoming and encouraging the migration of other religious groups to India while denying the same opportunity to Muslims substantiates the claim that Muslims cannot exist within the Indian identity.

Implementing a law providing a pathway to citizenship for all but one of the prominent religious groups in India suggests that the religious group excluded does not have a place within India's *populus*. The CAA almost instantly triggered a stream of violent protests, with Muslims often seeking peaceful protest that turned violent once Hindu groups attempted to intervene.¹⁷⁴ The Indian Police are complicit in the violence, facing accusations of excessive force and unequitable enforcement against Muslims, facing little consequence.¹⁷⁵ Brutality condoned by government actors in response to peaceful protest silences the Muslims minority by punishing the exercise of one of their limited methods for advocacy.

These citizenship laws are facially discriminatory, in violation of India's Constitution. Yet, the partition of India

¹⁷³ The Citizenship (Amendment) Bill, 2019, Bill No. 370 of 2019 (Dec. 4, 2019) (India).

¹⁷⁴ Aditi Bhandari & Anand Katakam, *India's Citizenship Protests*, REUTERS (Mar. 30, 2020), [https://www.reuters.com/graphics/INDIA-CITIZENSHIP/PROTESTS/jxlbpgqlpqd/index.html#:~:text=The%20Citizenship%20Amendment%20Act%20\(CAA,majority%20Afghanistan%20C%20Bangladesh%20and%20Pakistan.\(outlining%20the%20protests%20following%20the%20Citizenship%20Amendment%20Act\).](https://www.reuters.com/graphics/INDIA-CITIZENSHIP/PROTESTS/jxlbpgqlpqd/index.html#:~:text=The%20Citizenship%20Amendment%20Act%20(CAA,majority%20Afghanistan%20C%20Bangladesh%20and%20Pakistan.(outlining%20the%20protests%20following%20the%20Citizenship%20Amendment%20Act).)

¹⁷⁵ The Delhi Minorities Commission investigated a string of attacks on Muslims by Hindu mobs in 2020. The report found that the police filed a plethora of reports against Muslim victims but not against the Hindus that instigated the violence. Jayshree Bajoria, *India's Police Found Complicit in Anti-Muslim Mob Violence*, HUMAN RIGHTS WATCH (July 17, 2020 11:37 AM), <https://www.hrw.org/news/2020/07/17/indias-police-found-complicit-anti-muslim-mob-violence>. For a link to the full report see <https://dn790009.ca.archive.org/0/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf> (last accessed Jan. 3, 2024).

and Pakistan has become a pathway to justify the violations.¹⁷⁶ The Indian government disguises its direct alienation of the Muslim population by characterizing the CAA as a refuge for minority groups in neighboring countries.¹⁷⁷ The Indian government claims that the CAA does not violate the constitution because it applies to migrants rather than citizens.¹⁷⁸ And the government points to neighboring Afghanistan, Pakistan, and Bangladesh, majority Muslim countries, to justify the CAA as a pathway to refuge for the minority religious groups residing within those countries.¹⁷⁹ Excluding Muslims from the CAA perpetuates the system of religious discrimination that sparked the initial Muslim separatist movement that led to the formation of Pakistan and eventually Bangladesh.

This law cannot be viewed only as a safe harbor, it is also direct alienation of the Muslim population. This is exemplified by its intent to provide refuge for religious minority in conjunction with its failure to provide refuge for the Muslim minorities residing in neighboring countries such as Sri Lanka or Myanmar, which are majority Buddhist countries.¹⁸⁰ This express alienation of the Muslim population suggests that Islam cannot exist within the confines of the Indian identity. Creating pathways for citizenship for all major religious groups in the region except Muslims is exclusionary and ignores Muslims long history in India. Families having lived in India for generations, going back to pre-Mughal rule in the 16th century, are now faced with the potential of losing their right to remain in their home country. Using the creation of Islamic Pakistan as justification for

¹⁷⁶ *Changes to India's Citizenship Laws*, CONGRESSIONAL RSCH. SERV. (last updated Dec. 1, 2022), <https://crsreports.congress.gov/product/pdf/IF/IF11395>.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ <https://rpl.hds.harvard.edu/religion-context/case-studies/violence-peace/conflict-myanmar> (describing the extensive Islamophobia in Myanmar which has a 90% Buddhist population).

exclusionary laws creates a false reality that Muslims cannot call India home.

C. Places of Worship Act

The Places of Worship Act of 1991 stands as a legislative effort aimed at safeguarding the religious sanctity of India's diverse places of worship. However, the Act's implementation and subsequent events reveal underlying tensions and power dynamics within India's religious landscape, particularly concerning the Ram Janma Bhumi-Babri Masjid dispute. This controversial case underscores the complexities surrounding religious identity and heritage but also raises questions about the Act's efficacy in upholding its stated objectives of religious preservation and communal harmony.

The Places of Worship Act of 1991 is an act intended to preserve the religious character of places of worship in India.¹⁸¹ The Act dictates that no religious place standing at the time of India's independence, August 15, 1947, may be converted into a place of worship for another religious group.¹⁸² This law is seemingly neutral and aimed at preserving religion in consideration of India's undeniably religiously diverse population.¹⁸³ The Act also arguably deters religious violence by criminalizing the destruction of religious sites.

An exception carved into the Places of Worship Act has been used in effect to place greater value on Hindus to the detriment of Muslims. There is one place of worship through which an exception was carved, the Ram Janma Bhumi-Babri Masjid, considered the birthplace of Ram—one of Hinduism's most revered Gods.¹⁸⁴ At the time of

¹⁸¹ The Places of Worship (Special Provisions) Act, 1991 (India).

¹⁸² *Id.*

¹⁸³ See M. Siddiq (D) Thr. Lrs. V. Mahant Suresh Das, 2019 INSC 1231, 120-121 (India) (discussing the legislatures intent behind drafting and enacting the Places of Worship Act), available at https://main.sci.gov.in/pdfdate/index1.php?dt=2019-11-09&dno=363502010&filename=supremecourt/2010/36350/36350_2010_1_1502_18205_Judgement_09-Nov-2019.pdf.

¹⁸⁴ The Places of Worship (Special Provisions) Act, 1991, §5 (India).

independence, the Babri Masjid, a Muslim Mosque built at the beginning of the Mughal Empire, was standing at the site and Muslims had used the Mosque for over 400 years.¹⁸⁵ But an archeological survey of the land exposed the possibility of a Hindu temple predating the Mosque which was not destroyed, but rather built upon to erect the Mosque.¹⁸⁶ The year following the Places of Worship Act, 1992, Hindu nationalists destroyed the temple in a violent attack.¹⁸⁷ Litigation over the land ensued and the lower court ruled to divide the land between Hindus and Muslims given the lands extensive value to both religious groups.

Despite the fact that the Places of Worship Act was not intended to “rake up old controversies[,]” the Supreme Court took a deep dive into Indian history to revert the land back to Hindus.¹⁸⁸ Following decades of litigation, in 2019 the Indian Supreme Court ordered in a pivotal ruling that the land be given to the government and a Hindu temple be erected on the site of the demolished Mosque even though the Court found that the Mosque’s demolition violated the law.¹⁸⁹ Muslims were no longer given a portion of the land.¹⁹⁰ The exception to the Places of Worship Act

¹⁸⁵ See *Babri Mosque to Ram Temple: A Timeline from 1528 to 2024*, AL JAZEERA (Jan. 22, 2024), <https://www.aljazeera.com/news/2024/1/22/babri-mosque-to-ram-temple-a-timeline-from-1528-to-2024>.

¹⁸⁶ See Pallava Bagla, *Digging Up Hallowed Ground*, SCIENCE (Aug. 28, 2003), <https://www.science.org/content/article/digging-hallowed-ground>. But see Jaya Menon & Supriya Varma, *Was There a Temple Under The Babri Masjid? Reading The Archaeological ‘Evidence’*, 45 ECON. & POL. WKLY., no. 50, Dec. 11-17, 2010, at 61 (exposing the irregularities in the archeological survey that question its validity).

¹⁸⁷ Sheetal Parikh, *Enshrining a Secular Idol: A Judicial Response to the Violence Aftermath of Ayodhya*, 37 CASE W. RES. J. INT’L L. 85, 85 (2005) (“a mob of over 200,000 Hindu extremists, clad in saffron headbands, tore down and demolished the Babri Mosque”).

¹⁸⁸ M. Siddiq (D) Thr. Lrs. V. Mahant Suresh Das, 2019 INSC 1231, 121 (India), available at https://main.sci.gov.in/pdfdate/index1.php?dt=2019-11-09&dno=363502010&filename=supremecourt/2010/36350/36350_2010_1_1502_18205_Judgement_09-Nov-2019.pdf.

¹⁸⁹ *Id.* at 921-926.

¹⁹⁰ *Id.*

was utilized to the Hindu advantage, reverting the Muslim Mosque to a Hindu purpose.

The Supreme Court used the role of British governance in the history of Ram Janma Bhumi-Babri Masjid as part of its justification for eliminating the Muslim claim to the land.¹⁹¹ Under British governance the British attempted to divide the land by limiting Muslim worship to inside the Mosque and Hindu worship outside.¹⁹² The Supreme Court argued that this history proved that Muslims did not directly and exclusively possess the land to claim possession of it.¹⁹³ Ignoring the hundreds of years of uninterrupted Muslim worship at the Mosque in favor of government mandated shared land use negates the value and history of the Muslim claim to the land. Notably, Section 5 of the Places of Worship Act created a pathway that ultimately condoned the destruction of a Muslim monument, in direct conflict with the Acts mission. Legitimizing destruction by granting Hindu demands to build a Hindu temple rewards anti-Muslim violence. The Court, acting on behalf of the Indian government, reinforces the Hindu nationalist agenda by holding Hindu beliefs in higher authority than other religious groups and continues to degrade the value of the Muslim identity in Indian society.

The tumultuous saga surrounding the Places of Worship Act unveils the intricate layers of religious identity, historical grievances, and political maneuverings in India. While crafted to foster religious harmony, the Act's implementation has perpetuated religious polarization and favored the interests of one community over another. As India continues to grapple with the legacy of its past and strive towards a more inclusive future, the

¹⁹¹ *Id* at 921.

¹⁹² Parikh, *supra* note 188, at 96 (citing *Timeline: Ayodhya Holy Site Crisis*, BBC (last updated Dec. 6, 2012), <https://www.bbc.com/news/world-south-asia-11436552>).

¹⁹³ M. Siddiq (D) Thr. Lrs. V. Mahant Suresh Das, 2019 INSC 1231, 921 (India), available at https://main.sci.gov.in/pdfdate/index1.php?dt=2019-11-09&dno=363502010&filename=supremecourt/2010/36350/36350_2010_1_1502_18205_Judgement_09-Nov-2019.pdf.

efficacy and integrity of legislative, measures such as the Places of Worship Act remain subject to scrutiny and reflect the ongoing quest for religious coexistence and social justice in India.

V. CONCLUSION

The religious divides in India have deepened and fostered the juxtaposition of political identities defined by religious values controlling a secular nation. The chronic religious tension between Hindus and Muslims was ultimately exacerbated by British governance that promoted the importance of distinct religious identities.

Colonialism capitalized on the already existent religious tension between Hindus and Muslims through inaccurate codification of personal law, the Sanskritization of Hindustani, and an affirmative action system structured to align with Hindu society; promoting distinct communal identities. From false narratives to the development of a legal structure promoting communal identity, the British amplified Hindu-Muslim tensions to enable religious identities to absorb into the roots of political ideologies.

The continued implementation of British imposed law and policy following India's independence elevates the role of Hinduism in society and silences the voice of Muslim complainants. The impact of British exaggeration and oftentimes blatant misrepresentation of Muslims' role in Indian history has persisted in modern day government and led to exclusionary law and policy restricting Muslims' right to claim India as their home. The dominance of the BJP's Hindutva ideologies in government and society elevates the value of Hinduism in India to near absolute, in direct conflict with the pluralistic nature of India and secular nature of its government.

The continued integration of Hindu nationalist ideologies into Indian law and society restricts Muslim rights and condones the decimation of Muslim communities. Only a re-evaluation of the laws and policies in India can hope to shed light on the inequities perpetuating society and promote the development of a truly secular legal structure.