



Decriminalizing Faith: Muslim Identity and the Weaponization of Law in India

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Until the law protects every identity equally, can we still call ourselves a secular democracy?

In recent years, the everyday identity of Indian Muslims has come under increasing legal scrutiny.ⁱ The Unlawful Activities (Prevention) Act (UAPA), anti-conversion laws, the ban on the hijab, and the present waqf amendment bill have all contributed to the perception that the law is no longer a safeguard for minority rights but rather a tool of exclusion and subjugation. The Supreme Court made a very significant observation in *The Commissioner, Hindu Religious Endowment, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt's case*ⁱⁱ, in context of article 25ⁱⁱⁱ and article 26^{iv} of the constitution that freedom of religion encompasses not only religious beliefs but also religious practices. But now, Indian Muslims face discrimination^v for performing namaz, are lynched in the name of cows, have their stores boycotted in the name of vegetarianism, are refused rental housing, and have their homes demolished. In present times, the public portrayal of Muslim identity sits at the delicate nexus of vulnerability and accessibility, raising the question of whether the state is protecting Muslims or systematically criminalizing their existence.^{vi}

The Legal Framework of Criminalization

In India, the criminalization of Muslim identity is frequently concealed by neutral legal frameworks, but their arbitrary implementation reveals an alarming pattern. For example, the recent changes to the Waqf Laws^{vii} which have heightened state authority over Muslim religious properties and permitted non-muslims to serve the waqf boards raised concerns of targeted regulation. This Bill not only raised a significant question of undermining Muslim autonomy^{viii}

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over religious assets but also restricted the boards power to safeguard the waqf properties in court by eliminating the presumption of possession in their favour. Furthermore, policies requiring the names of employees to be displayed in restaurants have disproportionately impacted Muslim workers, resulting in a rise in prejudice.^{ix}

Additionally, the UAPA is still administered in a way that unfairly singles out Muslim Activists, raising questions over the repression of dissent and freedom of expression after activists like as Umar Khalid, Meeran Haider, and Sharjeel Imam were charged under it for taking part in protests to uphold the spirit of constitution.^x Demolitions of Muslim dwellings by bulldozers,^{xi} frequently without due process, are collective punishment carried out under the pretence of tearing down "illegal structures." (Haldwani Riots and Demolition of Madarsa, 2024).^{xii}

India had a startling 84% increase in communal violence in the year 2024 compared to the year before, with 10 out of 13 victims being Muslims, according to research by the Centre for Study of Society and Secularism.^{xiii} This study highlighted that few of the occurrences were connected to allegations of cow slaughter or cow vigilantism and other cases were related to the accusations of interfaith relationships and assaults targeting Muslims for their religious identity.

These changes highlight a concerning pattern in which administrative rules and legislative frameworks are used in ways that disenfranchise Muslim communities, calling for a critical analysis of their impact on India's secular and democratic fabric.

Being Muslim in Public: Between Faith and Fear

The legal overreach into Muslims Lives ^{xiv} permeates into mosques, homes, and streets. Media frequently reports cases of criminal prosecutions against Muslims for seemingly non-criminal activities such as praying, eating, wearing a skull cap, operating a business, or even falling in love. ^{xv}The State's approach to India's largest minority is becoming increasingly biased and prejudiced, as evidenced by the recent analysis of incidents that resulted in criminal cases against Muslims (Bahraich Violence and Demolition Notices, 2024).^{xvi} Frequently, routine events are framed as threats to public order, national security, or even terrorism. Offering namaz in private and rental properties as seen in Bareilly arrest, ^{xvii}for example, has encountered opposition on the pretence of upholding public order. In particular, the position of Muslims in India demonstrates how state

legislation, local ordinances, and official statements combine to accuse them of what can only be characterized as "status crimes."

Remedies and Legal Gaps: Reclaiming the Law from Margin to Mainstream

Dr. B.R. Ambedkar firmly believed that the protection of minorities^{xviii} was essential for the continued existence of democracy, advocating for constitutional protections that guarantee both equality and dignity. It is not for the muslims to change their approach and identity^{xix} rather the state, the executive branches, and the judiciary must alter their strategies in order to prevent the marginalization, persecution, violence, and injustice that Muslims face. The constitution of India offers powerful protections under Article 14, 21, and 25^{xx} which guarantees equality, dignity, and freedom of religion respectively. However, all these pathways are being deliberately undermined for Muslims in India since these rights are increasingly superseded by public order exceptions, majoritarian politics, and procedural barriers, leading to a breakdown of their legal and social identity.

The role of judiciary has likewise been irregular and inconsistent. Whether it's addressing communal disputes or shielding girls who are harassed^{xxi} for wearing hijabs, the judicial response^{xxii} have varied across jurisdictions, which not only draws attention to the absence of a clear, consistent constitutional position but also reflects deeper gaps in the protection of fundamental rights. The judiciary may be complicit in the continuance of discrimination if it fails to implement the equal protection of law and hold the executive branch responsible for its overreach which will not only weaken the public's trust in the legal system but and affects its independence in all areas. In addition to legal reforms, a reconstitution of public conscience, fair implementation of laws and state accountability is required to decriminalizing muslim identity because reclaiming the law from the margins means reaffirming it as an instrument of fairness and justice and not as an oppression.

Conclusion

If we are criminalizing an entire minority community, it will lead to significant legal and moral implications which is likely to impact not only the targeted community but also the legitimacy of the government institutions. The present legal system must serve as an instrument of protection

rather than persecution for the continued existence of secularism and democracy. There must be use of assertive legal language of citizenship, dignity, and constitutional morality to safeguard the identity of muslims. The law must be put back to its original purpose which is to act as a shield of justice and not as a weapon of fear and oppression.

ⁱ Mohammad Mohsin, 'Beyond headlines: How everyday discrimination shapes lives of Muslims in India' (Maktoob Media, 28 March 2025) <<https://maktoobmedia.com/opinion/beyond-headlines-how-everyday-discrimination-shapes-lives-of-muslims-in-india/>> accessed 30 June 2025

ⁱⁱ *The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [1954] AIR 282, [1954] SCR 1005 (SC).

ⁱⁱⁱ Constitution of India 1950, art 25.

^{iv} Ibid., art 26.

^v 'Review of 2022: A year of discrimination and violence experienced by India's religious minorities' (Clarion India, January 16, 2023) <<https://clarionindia.net/review-of-2022-a-year-of-discrimination-and-violence-experienced-by-indias-religious-minorities/>> accessed 30 June 2025

^{vi} 'India Persecution Tracker' (South Asia Justice Campaign) <<https://southasiajusticecampaign.org/ipt2025-1/>> accessed 30 June 2025.

^{vii} Aijaz Hussain and Sheikh Saaliq, 'India's parliament passes bill that would change Muslim land endowments' (*AP News*, 4 April 2025) <<https://apnews.com/article/india-muslim-endowments-waqf-parliament-4fb3ce70dbd2e579bccc43ce1e245f6d>> accessed 30 June 2025.

^{viii} 'Waqf Amendment Bill: Why Muslims are opposing it' (*Times of India*, 2 April 2025) <<https://timesofindia.indiatimes.com/india/waqf-amendment-bill-why-muslims-are-opposing-it/articleshow/119905795.cms>> accessed 30 June 2025.

^{ix} Hannah Ellis-Petersen and Aakash Hassan, 'Muslims in India face discrimination after restaurants forced to display workers' names' (*The Guardian*, 13 October 2024) <<https://www.theguardian.com/world/2024/oct/13/muslims-in-india-face-discrimination-after-restaurants-forced-to-display-workers-names>> accessed 30 June 2025.

^x 'Umar Khalid's arrest shouldn't allow Muslims' identity to become a crime, say eminent personalities' (*Scroll.in*, 24 September 2020) <<https://scroll.in/latest/974004/umar-khalids-arrest-shouldnt-allow-muslims-identity-to-become-a-crime-say-eminent-personalities>> accessed 30 June 2025.

^{xi} 'India authorities must immediately stop unjust targeted demolition of Muslim properties' (*Amnesty International*, 7 February 2024) <<https://www.amnesty.org/en/latest/news/2024/02/india-authorities-must-immediately-stop-unjust-targeted-demolition-of-muslim-properties/>> accessed 30 June 2025.

^{xii} Ayush Tiwari, 'Uttarakhand madrasa at centre of violence was demolished without a court order' (*Scroll.in*, 9 February 2024) <<https://scroll.in/article/1063483/uttarakhand-madrasa-at-centre-of-violence-was-demolished-without-a-court-order>> accessed 30 June 2025.

^{xiii} 'Hegemony and demolitions: The tale of communal riots in India in 2024' (*CSSS-ISLA*, 22 January 2025) <<https://csss-isl.com/secular-perspective/hegemony-and-demolitions-the-tale-of-communal-riots-in-india-in-2024/>> accessed 30 June 2025.

^{xiv} Mani Chander, 'The rising intimidation of India's Muslims: The criminalisation of eating, praying, loving, doing business' (*Article-14*, 16 September 2022) <<https://article-14.com/post/the-rising-intimidation-of-india-s-muslims-the-criminalisation-of-eating-praying-loving-doing-business-6323ce1e74c10>> accessed 30 June 2025.

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- ^{xv} Muhammad Assad Latif, 'Mapping Modern Islamophobia: A Contextualizing BJP's Hindutva Ideology and Muslim (Mis)Representation in Indian Media' (*IntechOpen*, 8 January, 2025) <<https://www.intechopen.com/chapters/1208962>> accessed 30 June 2025.
- ^{xvi} 'Bahraich communal violence: demolition notices strike fear in shopkeepers, many vacate' (*The Hindu*, 20 October 2024) <<https://www.thehindu.com/news/national/uttar-pradesh/bahraich-communal-violence-demolition-notices-strike-fear-in-shopkeepers-many-vacate/article68775025.ece>> accessed 30 June 2025.
- ^{xvii} Manish Sahu, '4 held for offering namaz in private property without taking permission: Bareilly police' (*Indian Express*, 20 January 2025) <<https://indianexpress.com/article/cities/lucknow/4-held-for-offering-namaz-in-private-property-without-taking-permission-bareilly-police-9787745/>> accessed 30 June 2025.
- ^{xviii} Vikas Pathak, 'Constituent Assembly debates: Minority rights absolute, Ambedkar said' (*The Hindu*, 16 November 2021) <https://www.thehindu.com/news/national/Constituent-Assembly-debates-Minority-rights-absolute-Ambedkar-said/article60229004.ece> accessed 30 June 2025.
- ^{xix} Apoorvanand, 'Indian Muslims identity crisis: Hindutva politics, religious discrimination, love-jihad' (*Frontline*, *The Hindu*, 11 December 2021) <https://frontline.thehindu.com/society/indian-muslims-identity-crisis-hindutva-politics-religious-discrimination-love-jihad/article68973441.ece> accessed 30 June 2025.
- ^{xx} Constitution of India 1950, arts. 14, 21, 25.
- ^{xxi} 'A year after hijab row in Karnataka, Muslim students face discrimination: report' (*New Indian Express*, 10 January 2023) <https://www.newindianexpress.com/nation/2023/Jan/10/a-year-after-hijab-row-in-karnataka-muslim-students-face-discrimination-report-2536324.html> accessed 30 June 2025.
- ^{xxii} 'Muslims in India face discrimination after restaurants forced to display workers' names' (*BBC News*, 13 October 2022) <https://www.bbc.com/news/world-asia-india-63225351> accessed 30 June 2025.