

# INCARCERATION OF MUSLIMS DURING COVID-19 AND JUDICIAL RETORT IN THE INDIAN STATE OF MAHARASHTRA

by *Mohammad Umar and Nizamuddin Ahmad Siddiqui*



**Mohammad Umar** teaches as Assistant Professor of Law at Bennett University, India and is also Founder Advisor to Weeramantry Centre for Peace, Justice and International Law. He holds a Ph.D. in international law and has published in areas like- global IP regime, regulation of fake news, transnational wildlife trade, gender in Muslim personal law etc. Umar has been invited to speak at several institutions including, among others- London School of Economics and Political Science, Hidayatullah National Law University, National University of Advanced Legal Studies, Jamia Millia Islamia and Indian Society of International Law. He has widely written for prominent Indian media houses and has also reviewed articles for reputed international journals. Currently, Umar is Co-Investigator in the research project concerning access to copyrighted works for visually impaired persons.

**Nizamuddin Ahmad Siddiqui** is Senior Research Fellow and PhD Candidate in International Law at Jindal Global Law School, India. Previously, he was Assistant Professor of Law at National Law University-Kolkata and Aligarh Muslim University (India). Mr. Siddiqui works in the area of law, religion and identity. He recently presented on the 'Plurality of International Law' at the Michigan Junior Scholars Conference (April 2021). His other work on 'Islamic Origins of Common Law' is scheduled for publication with Global Journal of Comparative Law (2022). Additionally, he runs a blog, The Indian Muslim, and has contributed extensively on citizenship rights and minority identity in India in the recent past. His Ph.D. explores the Shari'a Praxis in International Law.



## I. Introduction

The COVID-19 pandemic not only brought health emergencies to our doorstep but also allowed some States to garner greater control over their population. Studies suggest that the pandemic helped in the growth of populist tendencies and downgrading of the rule of law in erstwhile flourishing democracies.[1] The declaration of a global health emergency allowed the States to call for national security response measures whereby international borders were sealed and the movement of people was disrupted. Some also engaged in the emergency in the search for the enemy – a subject who can be made a scapegoat for the governments' failures in dealing with the virus. Some States blamed others for the global outbreak;[2] some blamed their neighbours for the cross-border transmission;[3] and then others blamed a section of their own population.[4] After all, the national emergency and the threat to the nation had to be put against "someone". Hate is easier to manufacture against peoples who happen to be the "others" and fall into a group known to be educationally disempowered and politically disenfranchised. They will bear the receiving end of the right-wing populist discourse and are vulnerable to majoritarian intimidation.

The infection in India spread at a time when the country was engaged in a fierce battle of words over the Citizenship (Amendment) Act, 2019 - a highly

discriminatory law that bluntly excludes Muslim migrants from being eligible to claim a fast-tracked citizenship. At the time when elections were about to happen in Delhi, the people protesting against the draconian law were being singled out by the State agencies.[5] *Shaheen Bagh*, a little known locality in Delhi, had been making global headlines for the Muslim women led protests;[6] the media was full of anti-Muslim rhetoric.[7] The communal atmosphere was charged to the extent that a call for killing Muslim 'traitors' was made by none less than a sitting minister at the Union level.[8] Then came the Delhi violence that resulted in violent attacks by charged organized mobs against Muslims in North Delhi, which led to the death of more than fifty people and many more injured.[9] COVID-19 set its foot in India in this backdrop.

This article attempts to trace how and why such developments happened, and the extent they affected the largest minority of India. The powerful narrative built around members of the popular Muslim group, *Tablighi Jamaat* (translated as Society of Preachers), is a textbook study on how vulnerable minorities can be pinned to the wall by the vicious nexus of the right-wing State and media. Members of the group happened to be present in the Nizamuddin Markaz (hereinafter "Markaz") situated in Delhi just when the coronavirus was picking up its pace in the country. A distasteful, obnoxious campaign followed against the group, which looked as if it was designed for the

larger purpose of fulfilling the communal agenda of the ruling dispensation. The campaign included a litany of criminal prosecutions of Indians and foreigners who were or were suspected to be a part of the programs in Markaz. Several petitions and FIRs were heard across the country by the high and lower courts.

The courts in the State of Maharashtra (hereinafter “Maharashtra”) rejected the State’s stance against the members of the *Tablighi Jamaat*. They played an instrumental role in breaking down the hateful plot brick by brick. The latter part of the article is dedicated to a detailed exposition of such cases that served a crucial purpose in dispelling some of the myths surrounding Muslim involvement in the spread of the disease. The article concludes with a remark on how a seemingly successful narrative built by the ruling party was busted by the strong judgements of the courts in Maharashtra.

## II. Muslims in India: A Backgrounder

Muslims as a minority community stand at the margins of the state. Recent research demonstrates that the social space for Muslim leadership in India has been constructed at the behest of the state.[10] It is argued that the Indian state makes representative claims by selectively co-opting the Muslim representatives to connect with the Muslim citizenry. The state thereby increasingly plays a significant role in defining the nature and the function of the Muslim leadership. It provides the necessary justification for such claims in the light of state sponsored secularism.[11] The research supports the decade old observations by Mushirul Hasan who argues that Muslims in India signify a stunted ability to both mobilize democratically and to stand against the authoritarian policies of the state, despite having faced a long-standing history of violence and discrimination.[12]

One of the chief reasons behind the limited representative capacity of the Muslim populace is the reduced ability of the Muslim Civil Society Organizations (CSOs) and the citizenry to ‘organise, participate and communicate without hindrance.’[13] The South Asia Minority Report (2020) found that Muslims carry limited ability to enjoy equal rights and have much lesser influence upon the political and social structures around them.[14] The Report highlights a poor show by the Muslims on various counts. Their population share is over 14 percent, but their representation in the lower house of the Parliament currently stands at 4.9 percent.[15] Muslims represent only 3.7 percent of the central civil service recruits (as per the last round of recruitment), with none amongst the over 28 police chiefs and state chief secretaries. Currently only one of the Supreme Court judges is Muslim and none of the top professional colleges in India have Muslims as members of their board of governors. Similarly, Muslims stand grossly underrepresented at governing bodies of top corporations, banks, public sector enterprises and media houses.[16]

The National Statistical Office (NSO) Report reveals the increasing rate of school and college level dropouts amongst Muslims. It highlights their condition to be ‘as bad or even worse than Scheduled Castes (SCs) and Scheduled Tribes (STs) in India.’[17] Similarly, according to the Ministry of Minority Affairs statement in the Parliament,

Muslims represent the lowest share of working people among all the communities (per Census 2011).[18] The US-India Policy Institute Report (2019) also observes that Muslims represent only 3.2 percent in the higher-level jobs and 1.6 percent in lower-level jobs which is significantly lower than that of the other minorities (Christians, Sikhs, Buddhists and Jains).[19] It argues that in order to fill this gap, the Muslims must receive ‘at least 42 percent share in the 10 percent Economically Weaker Sections (EWSs) quota’ as approved by the Government of India.[20]



## III. Manufacturing Violence

Targeted violence against Muslims has been part of the Indian psyche since independence.[21] Numerous incidents of communal violence, small and big, documented and undocumented, have been etched into the memory of every Indian.[22] However, the feeling of Islamophobia giving rise to hate crimes based on religious

identity is a recent phenomenon. A part of it could be attached to the post-9/11 Islamophobic mindset that percolated in virtually every public discourse. A much significant part, however, can be traced back to the ascendancy of right-wing Hindu nationalism beginning in the early 1990s. The marriage of the *Rashtriya Swayamsewak Sangh* (RSS) and the Bharatiya Janata Party (BJP), formalised by LK Advani, the chief architect of the *Ramjanmabhoomi* Movement,[23] and signified in the *Rath Yatra* of September-October, 1990, resulted in the secular BJP adopting the right-wing nationalism of the RSS.[24] Since then the Islamophobic narrative has only got stronger.[25]



The situation has become even more alarming since the assumption of power by the BJP government at the centre beginning 2014. The narrative has reached its peak under the leadership of Modi[26] with 1) a rise in the hate crime incidents,[27] 2) passing of discriminatory laws targeting religious minorities,[28] 3) legislative enactments and judicial pronouncements affecting the Muslim citizenry in direct ways,[29] and 4) state brutality upon the dissenting voices,[30] especially from the Muslim minority institutions.[31] The Muslim civic space, signifying the ability to live freely as a religious minority, has seen further shrinking on account of the growing populism coupled with religious majoritarianism of the RSS-BJP combined.[32]

#### IV. Populism and the Question of "Identity"

Recent works on Indian politics demonstrate that populism has been on the rise in India since 2014.[33] 'Populism', loosely defined as a 'political strategy'[34], has

the constitutive dimensions of both 'anti-elitism' and 'anti-pluralism'.[35] However, the term has been redefined under the Modi Government by encapsulating the Hindutva agenda of the RSS.[36] Hindutva was inspired by the writings of V.D. Savarkar, M.S. Golwalkar, and Deendayal Upadhyay,[37] and believes in Hinduism's 'ancient glory, spiritual superiority, and universal mission'.[38] The stigmatization of Muslims as aliens with corresponding victimization of Hindus clearly dominates the public imaginary of the Hindutva rhetoric.[39] Hindutva ideologically promotes a violent narrative of partition along religious lines, a constant state of conflict with the neighbouring Pakistan, and the idea that Muslim minority has consistently subjugated the Hindu majority, making the latter victims in their own land.[40]

This Islamophobic account of the 'othered' identity has metamorphosed into a dangerous trend more rapidly in recent times. It started with the securitization of Muslim identity, where Rohingya Muslims were targeted on account of their supposed terror links.[41] It then took the path of marginalizing the Muslim politico-legal identity through the route of Citizenship (Amendment) Act, 2019, followed by targeting the Muslim socio-economic identity with the spread of the pandemic in the country.[42]

#### V. COVID-19 and Unleashing of Islamophobia

Islamophobia gained further traction with the onset of COVID-19 infections. At the time when COVID-19 began to pose serious public health implications and the Indian authorities were under pressure to take decisive steps, coincidentally the *Tablighi Jama'at* held its meeting at its head-office at Nizamuddin in Delhi.[43] Similar gatherings were already being held at other parts of the country.[44] The *Jama'at* meeting gave enough content to the authorities to frame its members for the spread of COVID-19 throughout the country.[45] Soon thereafter Islamophobic discourse and its COVID-19 connection were injected into the public memory through various channels. Government agencies,[46] politicians including the Chief Ministers of states,[47] media outlets,[48] right-wing groups[49] and even individuals[50] became part of the maligning campaign on several media platforms, including social media. Government mouthpieces failed to follow their own guidelines circulated on 8 April 2020 ordaining refrain from labeling 'any community or area for the spread of COVID-19'.[51] The Joint Secretary to the Ministry of Health and Family Welfare specifically declared in his media briefing that around thirty percent of COVID-19 infections until the third week of April were linked to *Tablighi Jama'at*. [52]

Facts solely holding *Tablighi Jama'at* members responsible for the spread of the virus could not be substantiated.[53] Nevertheless, the use of hashtags like #CoronaJihad, #BioJihad, #TablighiJamaatVirus, #CrushTablighiSpitters, #MuslimMeaningTerrorist etc. were employed to frame individuals from the community and led to reported cases of suicide in a couple of instances.[54] This propaganda resulted in multiple hate crime incidents across the country, including attacks on Muslim places of worship.[55] Facebook and Twitter did not take action against these hate speeches.[56] *Equality Labs*, a US-based

organization researching Islamophobic content, therefore, urged the World Health Organization (WHO) to 'issue further guidelines against COVID-19 hate speech and disconnect it to religious communities.'[57]

Equity Labs' action was necessary because even secular parties took a position of particularly naming *Tablighi Jama'at* while reporting cases on COVID-19 in their press conferences.[58] This kind of targeted profiling of Muslims with *Tablighi Jama'at* as a proxy was unprecedented. The malice in the conjoint chorus by media and the government was ostensible, more so when ruling politicians continued to cast communal aspersions simultaneous to the media's full-fledged anti-Muslim smear campaign. This targeting (as discussed next) was recognized by the Indian courts, more particularly in Maharashtra, as an attempt to find a 'scapegoat' for one's own failure.

## VI. The Courts of Maharashtra

The persecution of the Muslim community on the pretext of waging 'corona jihad' against India coincided with the declaration of a complete twenty one day lockdown by the Ministry of Home Affairs, Government of India.[59] The right leaning Indian media's diatribe against Muslims through the shoulders of *Tablighi Jama'at* continued to peak when India went immobile.[60] It was accompanied by a series of FIRs being lodged against them by the Centre and States across the country. The fact they attended the gathering at Markaz or were suspect in that regard supplied enough fodder to have them put on trial. Such blatant abuse of law led to several writ petitions in the higher courts including the ones situated at the Indian cities of Allahabad, Jabalpur, Delhi, Bombay, Patna, Madras, Bengaluru and Dhanbad. All cases relating to foreigners visiting Markaz ended in acquittal for lack of evidence, quashing the FIRs, or freeing the accused after a settlement through plea bargaining.

Different jurisdictions adopted different routes to provide relief but the courts in the State of Maharashtra stood out for their sharp analysis. The cases are:

1. Konan Kodio Ganstone & ors. v. State of Maharashtra, 21 August 2020.
2. HLA Shwe and ors.v. State of Maharashtra, 21 September 2020.
3. Three orders of the Mumbai Metropolitan Magistrates, 29 September 2020 and 19 October 2020.

### Konan Kodio Ganstone & ors. v. State of Maharashtra[61]

The Konan Kodio judgment by the Aurangabad bench of the Bombay High Court stands out for its intellectual honesty and incisive clinical diagnosis of the issue. The case took up the combined writ petitions filed by both - Indians (three) and foreigners (ten, comprising people from Ivory Coast, Tanzania and Iran). The accused were arraigned for the offences under:

1. Section 14 (b) and (c) of the Foreigners Act (violating visa conditions).
2. Sections 2, 3 and 4 of the Epidemic Disease Act, 1897 (EDA) (power of the government to take special measures as to dangerous epidemic and

punish the contravention).

3. Section 51 of the Disaster Management Act, 2005 (DMA) (punishment for obstructing the employee of the government from discharging his/her functions).
4. Sections 188 (disobedience of order promulgated by public servant), 269 (negligent spread of disease), 270 (malignant spread of disease), 290 of the Indian Penal Code, 1860 (IPC).
5. Sections 37 (1) and (3) read with Section 135, Maharashtra Police Act, 1951 (prohibition of certain acts for prevention of disorder and to punish the contravention).
6. Section 11 of Maharashtra COVID-19 Measures and Rules, 2020 (power to penalise violations of Section 188, IPC).

Speaking through Justice TV Nalawade and Justice MG Sewlikar, the division bench quashed all the FIRs and gave the following observations on different aspects of the matter:

a. *On Media:* The court acknowledged the presence of a 'big propaganda' in media against foreigners attending markaz congregation, which led to a virtual 'persecution' and creation of 'a picture that these foreigners were responsible for spreading COVID-19 virus in India'. [62] Calling this unwarranted, the court observed that Tabligh activities are going on for more than half a century and thus it would be wrong to say that congregations like these 'started only after arrival of the foreigners'. [63]

b. *On Government:* Without naming any political party and mincing any words the court exclaimed:

A political Government tries to find the scapegoat when there is pandemic or calamity and the circumstances show that there is probability that these foreigners were chosen to make them scapegoats... It is now high time for the concerned to repent about this action taken against the foreigners and to take some positive steps to repair the damage done by such action. [64]

The allegation that members of *Tablighi Jama'at* brought COVID-19 virus along with them was rebuffed by the court as it saw a greater possibility of the accused getting infected in India instead of bringing the virus from their own countries. [65] In any case, if the virus did come through them, it would, in the court's opinion qualify as a lapse on the part of the Central Government that was responsible for the screening of the tourists at the airport. [66]

c. *On Tolerance:* The court reminded the government of the Indian culture that requires the guest to be treated as God. If there was any substance in the allegation of spreading virus, then the proper action would have been to send them back to their country 'without taking action like present one'. [67] It was thus noted:

we need to show more tolerance and we need to be more sensitive towards our guests particularly like the present petitioners... [I]nstead of helping them we lodged them in jails by making allegations that they are responsible for violation of travel documents, they are responsible for

spreading of virus etc.[68]

d. *On Indian Constitution*: A reference was made to the ideals in the American Constitution and spirit of 'fraternity', which found its way into the Preamble of the Indian Constitution. Hence, both the Courts and the Executive must also be conscious of the same before deciding upon taking any action. Even though liberties under Article 19 (freedom of movement and right to reside and settle) are available only to citizens of India, the rights under Article 21 (right to life), Article 20 (protection against ex post facto laws) and Article 25 (freedom to practice, profess and propagate religion) were rightly found to be available to all persons in India regardless of their nationality.[69]

Justice Nalawade also remarked that the laws at hand and actions taken by the Maharashtra state police against *Tablighi Jama'at* members were a mechanical exercise done 'under political compulsion' without any regard to powers under the procedural and substantive laws of the land.[70] He added:

The record shows that there was non application of mind by police and that is why even when no record was available to make out prima facie case, charge sheets are filed by police. The Government cannot give different treatment to citizens of different religions of different countries.

The court found such malicious instructions by the executive to the police discriminatory and thus violative of Article 14 of the Indian Constitution as well.[71]

e. *On Visa Violations*: The court referred to the language of the Visa Manual, 2019, which allowed the people on tourist visas to visit the religious places. The operative paragraph of the manual read as follows:

Foreign nationals granted any type of visa and OCI [Overseas Citizen of India] Cardholders shall not be permitted to engage themselves in tabligh work unless they are granted specific permission... *There will be no restriction in visiting religious places and attending normal religious activities like attending religious discourses. (emphasis added)*

The court also rejected the contention that information related to address was not duly shared by the accused as the visa process itself requires furnishing of all details related to the whereabouts of the incoming person.[72] Hence:

after granting of visa to the foreigners, the authority could not have prevented visit of the foreigners to Masjids or even the places like Markaz. They are entitled to offer Namaz in Masjid if there is practice to offer Namaz in the Masjid.[73]

The MHA notification was found *ultra vires* to the general practice in case of visa violations, which includes nothing more than a cancellation of visa and repatriation to the home country. As aforementioned, the new notification was seen as an instance of Article 20 violation which prohibits any person from being convicted under any law which did not exist at the time of the commission

of the act or from being subject to a greater penalty than what exists at the time of the commission of the act.[74]

f. *On Malice*: The court in a rare departure from judicial practice questioned the motive of the government in issuing specific directions against the foreigners of the Muslim faith. It found that the impugned order smelled of 'malice' because it was issued in the immediate background of large scale protests majorly organized by the Indian Muslim community against the Citizenship Amendment Act, 2019, a law termed 'fundamentally discriminatory in nature' by the UN High Commissioner for Human Rights because it arbitrarily excluded Muslims as stakeholders in the scheme of expedited citizenship devised for persecuted refugees and migrants coming from Afghanistan, Pakistan and Bangladesh.[75] Due to highly inflammatory statements issued by the top officials of the ruling dispensation, an apprehension seeped in the Muslim psyche that along with the proposed National Registration of Citizenship (NRC), CAA will not just affect the Muslims coming from outside but will also end up in exclusion of Muslims presently residing as citizens in India, consigning them into much dreaded detention camps.

Justice Nalawade observed in this regard:

There were protests on large scale not only in Delhi, but in the most of the States in India. It can be said that due to the present action taken fear was created in the minds of those Muslims. This action indirectly gave warning to Indian Muslims that action in any form and for anything can be taken against Muslims. It was indicated that even for keeping contact with Muslims of other countries, action will be taken against them.[76]

On making trustees of Indian masjids as co-accused in the matter for giving shelter to foreigners and supplying meals to them, it was further observed:

...Muslim persons who had given shelter to the foreigners are made accused probably with some purpose. This action must have created pressure on Indian Muslims. The persons of this community may avoid to keep contact with Muslims of other country now due to such actions. The material in respect of possibility of spreading of infection by the petitioners is already discussed with relevant dates. This situation created by the present action is against the promotion of idea of universal brotherhood.[77]

g. *On 'Congregation'*: Looking into the functioning of *Tablighi Jama'at*, the court concluded that the presence of its members in masjids or Markaz cannot be called a congregation in violation of the law or circulars promulgated (during the COVID spike in the first wave) because many Muslims with tourist visas from across the world regularly attend *Jama'at*'s programmes which are a 'continuous process' with no particular day fixed for 'congregation or any function'.[78] As far as residing within Masjid's premises is concerned, the residential facilities were enough to keep the gathering out of the purview of restrictions and hence, the living together of such residents cannot be classified as a congregation (even when the arrangements were apparently not in the form of

hostel).[79] This finding is critical because a place meant for residential purpose where people 'are living by restricting their movements cannot be treated as public place' as per orders of the state and central government.[80]

h. *On Charges*: The court further ruled that as far as charges under special enactments (DMA and EA), Section 188 of IPC and the Maharashtra Police Act are concerned, their violation is predicated on the 'breach of some order', something that was absent in the case at hand.[81] Also, given the absence of breach in the visa conditions, the application of Section 14 (b) and (c) of the Foreigners Act on the accused was understood to be irrelevant.[82] The charge of negligently or malignantly spreading the infection (Sections 269 & 270 of the IPC) was found infructuous as it was not 'possible to infer under any circumstances' that the accused were infected when they arrived in India.[83] Finally, the material put forth by the prosecution could not show any nuisance (Section 290 of IPC) 'created by the foreigners or Indian Muslims'.[84] On the contrary, 'an attempt was made by others to create such atmosphere against them'.[85]

Justice Nalawade held that 'it will be abuse of process of law if the petitioners are directed to face the trial' in the case.[86] All FIRs were consequently quashed. Justice M.G. Sewlikar concurred with most of the reasoning put forth by Justice Nalawade except for his observations on the prosecution of Tablighis serving as an indirect warning to Indian Muslims who had been protesting for the equal treatment of their community under the CAA.[87]

Justice Nalawade's observations on grounds of acquittal are critical. In addition to the hard law factors discussed above, he also found a basis in the charitable nature of the religious places and the humanitarian work that they did during the lockdown period. He highlighted that in many religious places 'arrangement was made for destitute persons, to give them shelter and to provide them meals' and therefore, 'giving shelter to such persons could not have been treated as offence, commission of the act of disobedience of [Government's] orders'.[88] He disagreed with the decision of the Karnataka High Court in a similar matter wherein the court acquitted the petitioners (about nine) but also simultaneously barred them from visiting India in next ten years and also directed to pay the fine as decided by the competent authority. Justice Nalawade held this order was 'not given on merits' and was only based on the 'concession proposed by the counsels of the State and Central Authority'.[89]

### **Decisions that followed Konan Kodio Judgment**

*HLA Shwe and ors. v. State of Maharashtra*[90]

The case involved eight Burmese nationals charged with offences under Sections 188, 269, 270 of IPC, Section 14 of the Foreigners Act, Section 3 of EDA and Section 51 of DMA. They were arrested during the institutional quarantine period and (as in the case above) were pitched by the state as violators of the nationwide lockdown imposed on 24 March, Section 144 order[91] and conditions stipulated in the Visa Manual, 2019.

The applicant contesting these claims relied on both-*Farhan Hussain* and *Konan Kodio* rulings while making a plea for quashing the FIRs registered against

them. The judges in the Division Bench, Justice V M Deshpandey and Justice Amit Borkar, quoted relevant portions of the Visa Manual and inferred that even though the applicants were accommodated in Markaz, the prosecution could produce no material to prove that the applicants were engaged in 'tabligh work and they were involved in preaching religious ideology or making speeches in religious places'.[92] The court dismissed the IPC charges observing negative COVID-19 results of the applicants and the consequent non-fulfilment of ingredients of the contested provisions.[93] The material on record also could not establish any attempt of obstructing the work of any official of the government. Hence, no liability under DMA or EDA could be fixed.[94] The disobedience of the order promulgated under Section 144 of the Criminal Procedure Code, 1973, because the court read Sections 188 and 195 of the IPC to require police to file a complaint before the judicial magistrate and not register an FIR straight away.[95] No FIR was registered in this case.

All these factors combined led the court to believe that 'allowing the prosecution to continue would be nothing but an abuse of the process'. Accordingly, all FIRs were quashed.

*Orders by Mumbai Metropolitan Magistrates (10th and 12th Court)*

Orders in the cases-*State v. Siti Nurhalizar and ors*[96] and *State v. Niazov Nurgazy and ors*[97] were passed by the Metropolitan Magistrate in Mumbai-Judge R R Khan, twenty days after the decision in a very similar matter was taken by his colleague Judge Jaydeo Ghule. Of all the charges levied (most of them overlapping with charges framed in the foregoing cases), Judge Ghule exonerated the accused (twelve Indonesian nationals) of visa violations observing that they did not 'deliberately disobeyed' government order or acted 'in the manner as was likely to spread the infection of the disease'.[98] The *Siti Nurhalizar* and *Niazov Nurgazy* cases involved ten Indonesian and ten Kyrgyz Republic nationals. The court adhered to the ratio in *Konan Kodio* and *Hla Shwe* on most points, but the bench also looked into the charge of violating the order made under Section 37(3) r/w 135 of Bombay Police Act, 1951. Judge Khan relied on the decided cases on due promulgation of orders:[99]

it is incumbent upon prosecution to show that the said order was promulgated in sense that it was published and also displayed in prominent places in the city and in absence of this, accused cannot be found guilty of any offence of breach of such order.

The prosecution could not prove due promulgation of the order and the case of the prosecution was substantially weakened on this ground. Justice Khan also mentioned the fault lines in the witnesses' depositions. One of them admitted having never seen the 'female accused...in the mosque'.[100] Another (the Investigating Officer in the case) admitted that he neither prepared *Spot Panchanaman* nor recorded statement of Trustee of Masjid and adjacent residents.[101] Further perusal revealed that they neither entered mosques 'nor noticed accused contravening the lock-down norms'.[102] The court, considering these aspects in totality, acquitted the accused spotting 'no iota of evidence...to show any contravention of order...beyond all

shadow of doubt'.<sup>[103]</sup>

## VII. Conclusion

The COVID-19 pandemic in India seems to be a story out of a fantasy book. A bunch of foreigners from faraway lands brought the virus into the country. They entered India on the pretext of attending a religious gathering. They connived during one of the meetings with some local men who then took the task of spreading the infection further. The meeting was planned at a religious convention centre in the heart of the Indian capital under the guidance of a local henchman with untraceable whereabouts. The 'terror' group carrying 'corona jihad' seemed determined to destroy the nation and its people. As fate would favour, the State agencies were able to crack the code right in time. They were not only able to identify the perpetrators but also showed a firm resolve by detaining the foreigners who would have otherwise run away. Meanwhile, since the infection had already spread throughout the country, the government had to trace every single individual who was part of the meeting and detain him under the relevant measures. Several vigilante groups of citizens also undertook the responsibility to foil the efforts of these 'human bombs'. The havoc could finally be averted due to the tireless leadership at the top that ultimately saved the nation by imposing the much-needed lockdown.

The story as it was being fed to the nation, however, had to be tested against some hard facts and questions of law. To the credit of the courts in Maharashtra, they performed their legal duties. The ratio and obiter in the *Konan Kodio* ruling will be archived for a long period of time because of its sheer reasoning and prognosis of the situation. The court took the unusual route of questioning the politics and malice behind the State action. A ruling government is rarely called out by the judiciary for hounding a religious minority and is told on face that such 'propaganda' driven 'persecution' is malicious. Judges in the case also deserve acknowledgement and praise for not sounding like patrons of the Muslims. Rather, the impression is that they spoke from the pedestal of the Muslim identity. Combined with other rulings of *HLA Shwe* and metropolitan magistrates in Mumbai, the overall outcome of the *Tablighi Jama'at* related jurisprudence in Maharashtra is that the Government of India was neither legally correct in its actions nor morally sound in dealing with the situation that the dreaded virus threw to 1.36 billion people of India.

[1] Cas Mudde, *Will the coronavirus 'kill populism'? Don't count on it*, the guardian (March 27, 2021), <http://www.theguardian.com/commentisfree/2020/mar/27/coronavirus-populism-trump-politics-response> (arguing that COVID-19 will probably not "kill" populism); Martin McKee et al., *Are Populist Leaders Creating the Conditions for the Spread of COVID-19?*, 10 (8) Int'l J. of Health Pol'y and Mgmt. 511 (2021), [http://www.ijhpm.com/article\\_3856\\_f89fb0f5288a5c7a1bfc80663eedce63.pdf](http://www.ijhpm.com/article_3856_f89fb0f5288a5c7a1bfc80663eedce63.pdf) (observing that there is a strong correlation between populist politicians and their poor performance in tackling COVID-19).

[2] Harsh Kakar, *The Blame game on coronavirus*, the statesman (March 24, 2020), <http://www.thestatesman.com/opinion/blame-game-coronavirus-1502869411.html>. (while US President

Donald Trump and his team called it the China virus or the Wuhan virus, the Chinese official retorted back by saying that its origins might be traced back to US).

[3] Manmath Nayak, *Nepal Blames India For COVID-19 Spread, Says Indian Virus More Lethal Than Chinese And Italian*, india.com (May 20, 2020), <http://www.india.com/news/world/nepal-blames-india-for-covid-19-spread-says-indian-virus-more-lethal-than-chinese-and-italian-4034621>; see also *COVID-19 Indian variant spreads to neighbouring countries; detected in Lanka, Bangladesh*, the economic times (May 08, 2021), <http://economictimes.indiatimes.com/news/india/covid-19-indian-variant-spreads-to-neighbouring-countries-detected-in-lanka-bangladesh/articleshow/82482773.cms>.

[4] Apart from India, the list included countries like Austria, Pakistan and Britain. Daniela Prugger, *Austria: Anger as Kurz blames minorities for spreading COVID-19*, Aljazeera (December 7, 2020), <http://www.aljazeera.com/news/2020/12/7/austria-anger-as-kurz-blames-minorities-for-spreading-covid-19>. See Jaffer A. Mirza, *Pakistan's Hazara Shia minority blamed for spread of COVID-19*, institute of development studies (April 17, 2020), <http://www.ids.ac.uk/opinions/pakistans-hazara-shia-minority-blamed-for-spread-of-covid-19/>; Alex Hudson, *British Politicians Blame Migrants and Ethnic Minorities for COVID-19 Spike*, newsweek (July 31, 2020), <http://www.newsweek.com/british-politicians-blame-migrants-ethnic-minorities-covid-19-spike-1521915>.

[5] Akash Bisht, *Indian police accused of targeting Muslims over anti-CAA protests*, Aljazeera (April 22, 2020), <http://www.aljazeera.com/news/2020/4/22/indian-police-accused-of-targeting-muslims-over-anti-caa-protests>; Vakasha Sachdev, *'It's Frightening': Judges, UN Experts on Targeting CAA Protesters*, The Quint (July 16, 2020), <http://www.thequint.com/news/india/frightening-targeting-of-anti-caa-protesters-cases-police-retired-judges-un-experts-s-darapuri-lokur-shah>; *'Unending Witch-Hunt of Muslims': Eminent Citizens Condemn Targeted Arrests of Anti-CAA Protesters*, The Wire (April 18, 2020), <http://thewire.in/communalism/muslims-witch-hunt-caa-protests>.

[6] Rana Ayyub, *Bilkis: The 100 Most Influential People of 2020*, Time (September 22, 2020), <http://time.com/collection/100-most-influential-people-2020/5888255/bilkis/> (Bilkis Dadi, aged 82, sitting at the *Shaheen Bagh* protest site said, "I will sit here till blood stops flowing in my veins so the children of this country and the world breathe the air of justice and equality.").

[7] Hasan Suroor, *BJP's rhetoric against Shaheen Bagh may end up fuelling the very thing it fears – Islamic radicalism*, the scroll (February 7, 2020), <http://scroll.in/article/952364/bjps-rhetoric-against-shaheen-bagh-may-end-up-fuelling-the-very-thing-it-fears-islamic-radicalism>; Purnima S. Tripathi, *BJP's venomous rhetoric in Delhi assembly election campaign*, frontline (February 28, 2020), <http://frontline.thehindu.com/the-nation/article30791743.ece#!> (highlighting how Shaheen Bagh became the epicentre of BJP's anti-Muslim poll rhetoric during Delhi elections).

[8] Sushant Mehra, *At Amit Shah's rally in Delhi, crowd chants 'Desh ke gaddaron ko...' , youth beaten for anti-CAA slogans*, India Today (January 26, 2020), <http://www.indiatoday.in/elections/story/delhi-assembly-elections-road-show-amit-shah-slogans-controversy-1640352-2020-01-26>.

[9] REPORT OF THE DELHI MINORITY COMMISSION

FACT-FINDING COMMITTEE ON NORTH-EAST DELHI RIOTS OF FEBRUARY 2020 (July 2020), <http://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf>.

[10] Nicolas Belorgey, Laurence Gautier & Julien Levesque, *The Social Space of Muslim Leadership in India: Profiles, Trajectories, and Networks of Office-Bearers in Muslim Organizations*, Centre For Science Humanities(csh) Online Lecture Series-12 (May 17, 2021), <http://www.csh-delhi.com/events/event/csh-lecture-series-12-online-the-social-space-of-muslim-leadership-in-india-profiles-trajectories-and-networks-of-office-bearers-in-muslim-organizations-n-belorgey-l-gautier-and-j-levesqu/>.

[11] *Id.*

[12] Mushirul Hasan, *Legacy of a Divided Nation: India's Muslims Since Independence* (New Delhi: Oxford University Press 2001).

[13] SOUTH ASIA STATE OF MINORITIES REPORT-2020, The South Asia Collective 93 (2020). *See also* Farah Naqvi, *Working With Muslims: Beyond Burqa and Triple Talaq* (Gurgaon: Three Essays Collective, 2018) ('A study of over 350 NGOs working with Muslims from across eight states revealed that while over 70 per cent of NGOs headed by non-Muslims had access to international funds, only 30.5 per cent of those headed by Muslims had similar access. Likewise, nearly 50 per cent of NGOs headed by non-Muslims had accessed Indian donor agencies, while just over 21 per cent of Muslim-headed NGOs have this access.')

[14] The South Asia Collective, *supra* note 13, at 93 (arguing that research shows that the minority development programme constantly labors between the desire to fulfil the development gaps suffered by Muslims and the call not to be seen catering exclusively to the Muslim needs). *See also* Centre for Equity Studies, *Promises to Keep – Investigating Government's Response to Sachar Committee Recommendations* (New Delhi: Centre for Equity Studies, 2011).

[15] The South Asia Collective, *supra* note 13, at 93 (describing a marginal increase from the 2014 Lok Sabha election). *See also* Christophe Jaffrelot & Gilles Verniers, *The Dwindling Minority*, *The Indian Express* (July 30, 2018), <http://indianexpress.com/article/opinion/columns/muslims-politicians-in-india-bjp-narendra-modi-government-5282128/> ("Muslim MPs currently occupy 19 seats of the Lok Sabha... the lowest figure since 1952."); Ghazala Jamil, *Who Can Represent Muslims in Electoral Politics? Debates in the Muslim Public Sphere*, *Economic and Political Weekly: Engage* (April 27, 2019), <http://www.epw.in/engage/article/who-can-represent-muslims-electoral-politics> (assessing the veracity of the claim that Muslims ought to withdraw from electoral politics for some time).

[16] *Muslim Representation in Governing Body of Prominent Institutes of India: 14 Years of Sachar Committee* (May 29, 2020), <http://rajatdutta13.blogspot.com/2020/05/muslim-representation-in-governing-body.html>.

[17] Atul Thakur, *Literacy rate for Muslims worse than SC/STs*, *The Times of India* (August 13, 2020) [https://timesofindia.indiatimes.com/india/literacy-rate-for-muslims-worse-than-sc/sts/articleshow/77514868.cms#:~:text=The%20literacy%20rate%20of%2080.6,than%20the%20rate%20among%20tribals.](https://timesofindia.indiatimes.com/india/literacy-rate-for-muslims-worse-than-sc/sts/articleshow/77514868.cms#:~:text=The%20literacy%20rate%20of%2080.6,than%20the%20rate%20among%20tribals.;); *See also* Rehan Ansari, *Christophe Jaffrelot on Indian Muslims after 73 years of Independence*, *Muslim Mirror* (August 14, 2020), <http://muslimmirror.com/eng/christophe-jaffrelot-on-indian-muslims-after-72-years-of-independence/>.

[18] Abantika Ghosh, *Muslim Working Proportion Lowest Among Communities*, *The Indian Express* (February 26, 2016), <http://indianexpress.com/article/india/india-news-india/muslim-working-proportion-lowest-among-communities/>.

[19] Abusaleh Shariff and M. Mohsin Alam Bhat, *Economically Weaker Section Quota in India: Realistic Target Group and Objective Criteria for Eligibility*, USIPI OCCASIONAL PAPER NO. 1 (May 05, 2019) 7 <(PDF) Economically Weaker Section quota in India: Realistic Target Group and Objective Criteria for Eligibility (researchgate.net)>

[20] Abusaleh Shariff and M. Mohsin Alam Bhat, *Economically Weaker Section Quota in India: Realistic Target Group and Objective Criteria for Eligibility*, USIPI OCCASIONAL PAPER NO. 1 (May 05, 2019), Statement I: National Scenario, pg. 7 <(PDF) Economically Weaker Section quota in India: Realistic Target Group and Objective Criteria for Eligibility (researchgate.net)>

[21] Asghar Ali Engineer, *Communal Riots After Independence: A Comprehensive Account* (Delhi: Shipra, 2004).

[22] *See e.g.* B. Rajeshwari, *Communal Riots in India: A Chronology (1947-2003)* Institute of Peace and Conflict Studies 25 (2004), [http://www.nagarikmancha.org/images/1242-Documents-Communal\\_Riots\\_in\\_India.pdf](http://www.nagarikmancha.org/images/1242-Documents-Communal_Riots_in_India.pdf) (recording that an estimated 25,628 lives were lost, including 1005 in police firings till 2003); Steven Wilkinson, *Cotes and Violence: Electoral Competition and Ethnic Riots in India 1* (New York: Cambridge University Press, 2004) (arguing that the major riots only happen when the state machinery refuses to stop them; while the decision depends largely upon the electoral incentives).

[23] The *Ramjanmabhoomi* Movement was initiated to spearhead the construction of Ram Temple at the contested site at Ayodhya in Uttar Pradesh. Recently, the Supreme Court has allowed the construction of the temple by handing over the site to the Hindus.

[24] Arundhati Roy, *The Intimations of an Ending: The Rise and Rise of the Hindu Nation*, *The Caravan* (Nov. 21, 2019), <http://caravanmagazine.in/politics/rise-and-rise-of-hindu-nation>.

[25] Gareth Nellis, Michael Weaver & Steven C. Rosenzweig, *Do Parties Matter for Ethnic Violence? Evidence From India*, 11 *Quarterly Journal of Political Science* 249, 267–68 (2016) (arguing that "the BJS/BJP saw a 0.8 percentage point average increase in their vote share following a riot in the year prior to an election.").

[26] Vinod K. Jose, *The Emperor Uncrowned: The Rise of Narendra Modi*, *The Caravan* (March 1, 2012), <http://caravanmagazine.in/reportage/emperor-uncrowned-narendra-modi-profile>.

[27] *REPORT OF THE DELHI MINORITY COMMISSION FACT FINDING COMMITTEE ON NORTH-EAST DELHI RIOTS OF FEBRUARY 2020*, Delhi Minorities Comm'n Gov't of NCT of Delhi 14 (July 2020), <http://ia801906.us.archive.org/11/items/dmc-delhi-riot-fact-report-2020/-Delhi-riots-Fact-Finding-2020.pdf> (highlighting that the violence was seemingly planned and directed against Muslims protesting against the discriminatory citizenship law). *See also* UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM ANNUAL REPORT 2021 USCIRF 22 (2021), <http://www.uscirf.gov/sites/default/files/2021-04/2021%20Annual%20Report.pdf> (classifying the Delhi communal riots of February 2020 as the worst

Hindu-Muslim mob violence in more than three decades which resulted in the death of more than 50 people, mostly Muslim).

[28] See USCIRF, *supra* note 27, at 23 (including anti-conversion laws targeting Muslims and Christians and laws meant for the protection of cows, targeting Muslims and Dalits).

[29] *The Muslim Women (Protection of Rights on Marriage) Act, 2019* (July 31, 2019) also known as the ‘Triple Talaq Act’ (sections 3 and 4 of the Act provide that any pronouncement of ‘talaq’ (divorce) by a Muslim husband upon his wife shall be void and illegal, and shall also be punishable with an imprisonment of a term extending upto 3 years); see also *The Jammu and Kashmir Reorganisation Act, 2019* (August 9, 2019) (abrogating Article 370 of the Indian Constitution while taking away the autonomy of Jammu and Kashmir, the only Muslim-majority state in the country); *M. Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors*, Civil Appeal Nos 10866-10867 of 2010 (November 9, 2019) (ruling on the basis of Hindu faith that Babri mosque stood at the ruins of the birthplace of Lord Rama); *The Citizenship (Amendment) Act, 2019* (December 12, 2019) (opening bureaucratic channels to render millions from amongst the Muslim citizenry to be declared as illegal migrants).

[30] Akshay Deshmane, *UP Police Admits It Wrongly Accused Innocent Muslims of Violence During Anti-CAA Protest*, huffington post (Jan. 8, 2020), [http://www.huffpost.com/archive/in/entry/up-caa-protest-police-uttar-pradesh\\_in\\_5e15934ec5b66361cb5cd3ec?utm\\_hp\\_ref=in-muzaffarnagar](http://www.huffpost.com/archive/in/entry/up-caa-protest-police-uttar-pradesh_in_5e15934ec5b66361cb5cd3ec?utm_hp_ref=in-muzaffarnagar).

[31] *THE DISMANTLING OF MINORITY EDUCATION: POLICE VIOLENCE IN ALIGARH MUSLIM UNIVERSITY AND JAMIA MILLIA ISLAMIA*, Citizens Against Hate (Nov. 2020), <http://citizensagainsthate.org/wp-content/uploads/2020/12/Dismantling-of-Minority-Education-Violence-against-JMI-and-AMU.pdf>; *Undeterred, AMUSU releases Ground Report detailing police brutality on students*, Sabrang (Dec. 24, 2019), <http://www.sabrangindia.in/article/undeterred-amusu-releases-ground-report-detailing-police-brutality-students> (highlighting state sponsored brutality on the campuses).

[32] Angana P. Chatterji, Thomas Blom Hansen and Christophe Jaffrelot (eds.), *Majoritarian State: How Hindu Nationalism in Changing India* (Harper Collins, 2019) 12 (observing that the ‘minority/Othered is now officially reconfigured as an obstacle to development, a drain on resources, an alien and socially divisive element that weakens cultural cohesion, a primitive, non-modern and unassimilable remnant of the past’).

[33] *Id*; see also Christophe Jaffrelot & Louise Tillin, *Populism in India*, KALTWASSER ET AL (eds.), *The Oxford Handbook of Populism* (Oxford University Press, 2017).

[34] Kurt Weyland, *Clarifying a Contested Concept: Populism in the Study of Latin American Politics*, 34 (1) *Comparative Politics* 1, 14 (2001) (defining populism as a “political strategy through which a personalistic leader seeks or exercises government power based on direct, unmediated, uninstitutionalized support from large numbers of mostly unorganized followers.”).

[35] Jan-Werner Müller, *What is Populism?* (Philadelphia: University of Pennsylvania Press, 2016); see also Johannes Plagemann & Sandra Destradi, *Populism and Foreign Policy: The Case of India*, 15 *Foreign Pol’y Analysis* 283 (2019).

[36] Christophe Jaffrelot and Louise Tillin, *Populism in*

*India*, Kaltwasser et al (eds.), *The Oxford Handbook of populism* (Oxford University Press, 2017) (Modi’s ethno-religious populism needs to be distinguished from the socio-economic populism supported by Indira Gandhi and others); Plagemann & Destradi, *supra* note 35, at 289 (describing that while Indira Gandhi exhibited important elements of populism, her political strategy did not inspire anti-pluralism anti-pluralism); *id* (‘the Indian government under Prime Minister Modi...clearly entails both constitutive dimensions of populism: anti-elitism and anti-pluralism.’).

[37] Nilanjan Mukhopadhyay, *The RSS: Icons of the Indian Right* (Westland Publications, 2019) (highlighting the contributions of the major figures of the RSS movement starting from the very beginning); see also walter andersen and shridhar d. damle, *Messengers of Hindu Nationalism: how the rss reshaped india* (London: Hurst and Company, 2019) (highlighting how the RSS agenda is being taken forward by the BJP).

[38] Plagemann & Destradi, *supra* note 35, at 291.

[39] Thomas B. Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India* 194 (Princeton University Press, 1999). See also Plagemann & Destradi, *supra* note 35, at 291.

[40] See also Plagemann & Destradi, *supra* note 35, at 291; Christophe Jaffrelot, *The Hindu Nationalist Movement and Indian Politics* 522 (London: Hurst, 1996).

[41] *Mohammad Salimullah v. Union of India*, WP (C) 793/2017 (pending) (April 8, 2021 order of the Supreme Court denied interim stay of Rohingya deportation from India). See also Nizamuddin Ahmad Siddiqui & Abu Zar Ali, *Supreme Court Order Allowing Deportation of Rohingyas Shows that India Hasn’t Shed Partition Baggage*, *The Scroll* (April 18, 2021), <http://scroll.in/article/992447/supreme-court-order-allowing-deportation-of-rohingyas-shows-that-india-hasnt-shed-partition-baggage> (arguing that the Supreme Court order links the issue Rohingya deportation with citizenship anxieties of the post-partition days).

[42] Al Jazeera, *‘Do not buy from Muslims’: BJP leader in India calls for boycott* (29th April 2020), <http://www.com/news/20aljazeera20/4/29/do-not-buy-from-muslims-bjp-leader-in-india-calls-for-boycott>; see also Ayush Tiwari, *‘We’ve stopped going there’: Muslim fruits suppliers in Noida speak of discrimination and hostility*, *Newslaundry* (May 01, 2020), <http://www.newslaundry.com/2020/05/01/weve-stopped-going-there-muslim-fruits-suppliers-in-noida-speak-of-discrimination-and-hostility>.

[43] Tablighi Jama’at organized its conference in Delhi on March 10-13, 2020. The conference occurred a week before India entered its national lockdown on March 24, 2020

[44] Niala Mohammad, *Coronavirus Spread In India Sparks Intolerance Toward Minority Muslims*, *Extremism Watch* (April 17, 2020), <http://www.voanews.com/extremism-watch/coronavirus-spread-india-sparks-intolerance-toward-minority-muslims> (Faizan Mustafa, professor of constitutional law, argued that Tirupati Temple was open to the public till March 16, 2020 with an estimated 30,000 to 40,000 visitors per day. Similarly, Somanth Temple with average visitors of up to 5,000 per day kept open till March 18, 2020. Kashi Viswanath Temple was also open until March 20, 2020); see also Nandini Marwah, *COVID-19: Chronology which led to the “blame game” of a pandemic in India*, *inventiva* (April 20, 2020), <http://www.inventiva.co.in/stories/nandini/covid-19-chronology-which-led-to-the-blame-game-of-a-pandemic->

in-india/ (highlighting further that while the Jama'at incident took place on March 13-15, 2020, Siddhi Vinayak Temple in Mumbai was operational till March 16, 2020. Moreover, Shirdi Sai Baba Temple and Vaishno Devi Temple kept open till March 17 and 18, 2020 respectively. Additionally, Karnataka's Chief Minister attended a marriage ceremony on March 15, 2020 with more than a thousand people present. Similarly, the Madhya Pradesh Chief Minister, Shivraj Singh Chouhan was sworn-in in the presence of other leaders on March 23, 2020).

[45] *Mamata targets 'communal virus'*, The Telegraph: online (April 11, 2020), [http://www.telegraphindia.com/west-bengal/coronavirus-lockdown-mamata-targets-communal-virus/cid/1764225?ref=west-bengal\\_h](http://www.telegraphindia.com/west-bengal/coronavirus-lockdown-mamata-targets-communal-virus/cid/1764225?ref=west-bengal_h) (a memo sent by the central government asking the Government of West Bengal identified 6 out of 7 areas which were Muslim dominated).

[46] *Coronavirus conspiracy theories targeting Muslims Spread in India*, The Guardian (April 13, 2020), <https://www.theguardian.com/world/2020/apr/13/coronavirus-conspiracy-theories-targeting-muslims-spread-in-india> (in Uttar Pradesh, for instance, the police offered up to 10,000 rupees (£105) for information on anyone who had attended the gathering).

[47] Jeffrey Gettleman, Kai Schultz & Suhasini Raj, *In India, coronavirus fans religious hatred*, The NY Times (April 12, 2020), <http://www.nytimes.com/2020/04/12/world/asia/india-coronavirus-muslims-bigotry.html> (describing Raj Thackeray, the leader of the Maharashtra Navnirman Sena, argued that the *Tablighi Jamaat* members "should be shot." Rajeev Bindal, a leader within Modi's Bharatiya Janata Party, profiled *Jamaat* members as "human bombs." Similarly, M.P. Renukacharya, a BJP MLA from Karnataka told local media that *Tablighi Jamaat* members were spreading COVID-19 infection "like terrorism."); see also *Crime Committed By Tablighi Jamaat: Yogi Blames Islamic Group For COVID-19 Spread*, Press Trust of India (May 3, 2020), <http://www.outlookindia.com/website/story/india-news-crime-committed-by-tablighi-jamaat-yogi-adityanath-blames-islamic-group-for-covid-19-spread/351993>; *MP minister says Jamaat event led to spike in cases; tally rises to 2, 387*, Hindustan Times (April 29, 2020), <http://www.hindustantimes.com/india-news/mp-minister-says-jamaat-event-led-to-spike-in-cases-tally-rises-to-2-387/story-hShogWwl6u54a9J5MoDSXJ.html>; *Tablighis will be booked under IPC 307: Haryana CM Manohar Lal Khattar, says 'no one will be spared'*, times now (April 11, 2020), <http://www.timesnownews.com/india/article/tablighis-will-be-booked-under-ipc-307-haryana-cm-manohar-lal-khattar-says-no-one-will-be-spared/57685>; *Andhra Pradesh deputy CM blames Tablighi Jamaat for COVID-19; apologises later*, The Times of India (April 12, 2020), <http://timesofindia.indiatimes.com/city/hyderabad/ap-dy-cm-blames-tj-for-covid-19-apologises-later/articleshow/75102284.cms>.

[48] *Media watch: How vocabulary was weaponised to target Indian Muslims after the Tablighi Jamaat event*, The Scroll (April 12, 2020), <http://scroll.in/article/958976/media-watch-how-vocabulary-was-weaponised-to-target-indian-muslims-after-the-tablighi-jamat-event> ('113 people hiding in 8 mosques; had attended Nizamuddin Markaz.' *The Hindustan Times* wrote, 'COVID-19: 600 foreign Tablighi Jamaat workers found hiding across Delhi, and counting.' On the contrary, an NDTV headline said: 'Coronavirus lockdown: 400 pilgrims stuck in Vaishno Devi, court orders help for them.')

[49] See T. Soundararajan et al, *Coronajihad: An Analysis of COVID-19 Hatespeech and Disinformation* (Equality Labs, 2020) (highlighting the role of RSS in spreading hate-speech on Facebook and Twitter against Muslims).

[50] Jeffrey Gettleman, Kai Schultz & Suhasini Ra, *supra* note 47 (for instance, in the village of Harewali, near Delhi, a mob beat Mehboob Ali, a young Muslim man, for attending *Tablighi Jamaat* events, and filmed the beating); *The Coronavirus Has Morphed Into an Anti-Muslim Virus*, The Wire (April 13, 2020), <http://thewire.in/communalism/coronavirus-anti-muslim-propaganda-india> (multiple attacks on Muslims individuals and mosques were recorded in Karnataka); *'Don't Touch Them': Muslims Attacked in Karnataka ver COVID-19*, The Quint (April 8, 2020), <https://www.thequint.com/videos/news-videos/attacks-blaming-muslims-for-covid-19-reported-across-karnataka#read-more>.

[51] *Addressing Social Stigma Associated with COVID-19*, ministry of health and family welfare, government of india (April 8, 2020), <http://www.mohfw.gov.in/pdf/AddressingSocialStigmaAssociatedwithCOVID19.pdf>.

[52] *More than 29 per cent of India's cases can be attributed to Nizamuddin cluster: Lav Agarwal*, Press Trust of India (April 18, 2020), <http://economictimes.indiatimes.com/news/politics-and-nation/more-than-29-per-cent-of-indias-cases-can-be-attributed-to-nizamuddin-cluster-lav-agarwal/articleshow/75220647.cms>.

[53] Shoeb Daniyal, *Explained: How sampling bias drove sensationalist reporting around Tablighi coronavirus cases*, Scroll.In (April 7, 2020), <https://scroll.in/article/958392/explained-sampling-bias-drove-sensationalist-reporting-around-tablighi-coronavirus-cases> (observing that *Jamaat* being solely responsible for the spread of the infection was a wrong conclusion based on a sampling bias).

[54] *India's Hindu Nationalists Are Inciting Hate By Claiming Muslims Are Spreading Coronavirus*, Vice (April 13, 2020), [http://www.vice.com/en\\_in/article/akwmyj/indias-hindu-nationalists-are-inciting-hate-by-claiming-muslims-are-spreading-coronavirus](http://www.vice.com/en_in/article/akwmyj/indias-hindu-nationalists-are-inciting-hate-by-claiming-muslims-are-spreading-coronavirus) (social media monitoring tool CrowdTangle recorded, between the period of March 29 and April 3 that the #coronajihad hashtag alone has had over 249,733 interactions on Facebook. Similarly, on Twitter, almost 300,000 conversations took place with the #coronajihad hashtag, with over 700,000 accounts engaging in those conversations as reported by social media analysis tool TalkWalker. Additionally, the potential reach of those conversations was estimated to be around 170 million accounts.); *It Was Already Dangerous to Be Muslim in India. Then Came the Coronavirus*, Time (April 3, 2020), <http://time.com/5815264/coronavirus-india-islamophobia-coronajihad/>; The Wire, *supra* note 50.

[55] The Wire, *supra* note 50 (Zafarul Islam, Chairperson of the Delhi Minorities Commission, reported that 200 men attacked and ransacked a mosque in Mukhmelpur village in North West Delhi during the period); Andrea Malji, *People Don't Want a Mosque Here: Destruction of Minority Religious Sites as a Strategy of Nationalism*, 9 (1) J. of Religion and Violence 50 (2021) (arguing that the destruction of minority religious sites is an attempt towards historical revisionism and a re-assertion of the right to territory by the majority).

[56] See T. Soundararajan et al., *supra* note 49 (concluding that 'the reticence of social media platforms to remove known Islamophobic and casteist handles has led to this crisis').

- [57]The Guardian, *supra* note 46.
- [58]The Chief Minister of Delhi, Mr. Arvind Kejriwal from the Aam Admi Party made it sure to put up before the press that ‘among the 20 new cases, 10 had attended the Tablighi Jamaatevent in Nizamuddin. So far, 330 people from Markaz have tested positive’. 330 Markaz attendees take Delhi’s COVID-19 tally to 523: CM, Outlook India (April 6, 2020), <http://www.outlookindia.com/newscroll/330-markaz-attendees-take-delhis-covid19-tally-to-523-cm/1793457>.
- [59]MHA order No. 40-3/2020-DM-I(A), 24 March 2020.
- [60]To read detailed account of these media trials and their fallouts, see Shweta Desai & Amarnath Amarasingam, #CoronaJihad: COVID-19, Misinformation, and Anti-Muslim Violence in India, <http://strongcitiesnetwork.org/en/wp-content/uploads/sites/5/2020/06/CoronaJihad.pdf>.
- [61]Bombay High Court (Aurangabad Bench), Criminal Writ Petition no. 548 of 2020.
- [62]*Id.* at 38.
- [63]*Id.* at 39.
- [64]*Id.* at 38.
- [65]*Id.* at 37.
- [66]*Id.*
- [67]*Id.* at 40–41.
- [68]*Id.* at 29.
- [69]*Id.* at 36–37, 42.
- [70]*Id.* at 55–56.
- [71]*Id.*
- [72]*Id.* at 36.
- [73]*Id.* at 42–43.
- [74]Article 20, Constitution of India (1950).
- [75]*Press Briefing on India*, Un High Commissioner for Human Rights (December 13, 2019), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25425&LangID=E>.
- [76]Bombay High Court (Aurangabad Bench), *supra* note 61, at 44.
- [77]*Id.* at 52–53.
- [78]*Id.* at 32–35.
- [79]*Id.* at 50–51.
- [80]*Id.*
- [81]*Id.* at 45.
- [82]*Id.* at 42–43.
- [83]*Id.* at 46–47.
- [84]*Id.*
- [85]*Id.*
- [86]*Id.* at 56–57.
- [87]In a separate order released on 27 August 2020.
- [88]*Id.* at 52–53.
- [89]Farhan Hussain v. State and Anr., Karnataka High Court, Criminal Writ Petition No. 2376/2020. These conditions were finally overruled by the Supreme Court in an order delivered on 16 November 2020 in the case-
- Toichubek Uulu Bakytbek v.State of Karnataka, CRIMINAL APPEAL NO. 754 OF 2020.
- [90]Bombay High Court, Nagpur Bench, Criminal Application (Apl) No. 453 of 2020.
- [91]Section 144 of the Indian Code of Criminal Procedure, 1973 empowers the magistrate to issue orders addressing urgent cases of apprehended danger or nuisance. Usually, the ban is to prohibit an assembly of five or more people in order to tackle situations like COVID-19, riots etc.
- [92]Bombay High Court, *supra* note 90, at 7.
- [93]*Id.* at 10–11, 13–14.
- [94]*Id.* at 16.
- [95]*Id.* at 18.
- [96]Court of the Metropolitan Magistrate, 10th court, c.c. no. 1604 / pw / 2020.
- [97]Court of the Metropolitan Magistrate, 10th court, c. c. no. 1603 / pw / 2020.
- [98]Court of the Metropolitan Magistrate, 12th court, c.c. no. 663 / pw / 2020.
- [99]Ramesh Mulchand Ramani v. The State of Maharashtra, 1980 Bom CR 822; State of Maharashtra v. George Fernandes, 1985(1) Bom. CR 696.
- [100]Mukhopadhyay, *supra* note 37.
- [101]*Id.*
- [102]*Id.*
- [103]*Id.*