

**THE LAW AND POLITICS OF THE MUSLIM MINORITY CITIZEN**

*Nizamuddin Ahmad Siddiqui*<sup>1</sup>

**DISCLAIMER**

Any suggestions, comments and/or clarifications over this draft may directly be addressed to the author at [ahmad.siddiqui88@gmail.com](mailto:ahmad.siddiqui88@gmail.com). All errors are personally attributable to the author.

**THE CONCEPT NOTE**

**I. What is a liberal constitutional democracy?**

1. Liberal Constitutional Democracy (LCD) is an amalgamation of the ideas embodied in liberalism, constitutionalism and democracy.
2. Liberalism calls for individual rights and individual autonomy. It regards an individual as an end in himself. It also regards religion as a matter of private lives and nothing that has any public interface. In liberalism human rights enjoy primary importance within the state set-up.
3. Constitutionalism regards a prior agreed politico-legal framework to guide the affairs of the state. Since state is different from the society in the liberal context, liberal constitutionalism addresses only the concerns of the state and the interaction of the state with the society. In that sense one of the core ideas of liberal constitutionalism is to safeguard the rights of the individuals through the agency of the law.
4. Democracy creates a governance structure within a state. It means that all the important decisions with regards to the state shall be decided in accordance with the principles of majority-consent. This means that the core idea of democracy is a search towards consensus with an objective to benefit the state. The latter being an entity in itself. In this context ‘popular democracy’ as imagined by Rousseau

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<sup>1</sup> BALLB (AMU, 2011); PG Diploma (ISIL, 2012); LLM (SAU, 2013); PhD (JGU, 2017-) Currently: Senior Research Fellow and PhD Candidate, Jindal Global Law School, OP Jindal Global University. Formerly: Assistant Professor of Law, WBNUJS, Kolkata (2014-2017); Visiting Faculty, Aliah University, Kolkata (2014-2015); and, Assistant Professor of Law, AMU-Murshidabad (2013-2014). Since this is still a work in progress the citation may not be arranged in a proper manner. Any comments and/or suggestions are duly welcome.

seems to be the most visible form. Rousseau called for a general consensus over any matter that has political implications, mainly the form and the structure of the government within a state.

5. Liberal democracy within itself remains a contested issue as liberalism and democracy both account for competing ideas of individual liberty and group consensus. However, this inherent contradiction is disregarded by scholars like John Rawls and Habermas (including John Locke and Rousseau from earlier generations) by arguing that this contradiction could be easily filled through the agency of the law – ‘rule of law’.<sup>2</sup> It is this rule of law which is sought to be achieved through the channel of constitutionalism.
6. An LCD can, therefore, loosely be defined as a form of state where individual rights are protected through the rule of law and major political decisions (especially the issues of political representation) are decided through popular consensus. This is achieved through a robust judiciary which safeguards the rights of the individual against the ill-actions of the state; and an independent media, which safeguards the correct and unbiased channelling of information to the citizenry.

## **II. How minority rights are construed in an LCD?**

1. Since an LCD is structured along popular consensus there are two things that need to be safeguarded at the very outset – *first*, the individual rights of the citizens from the excesses of the state; and *second*, the rights of the minority against the excesses of the majority.
2. There is another challenge which an LCD has to face – to create significant political space for the recognition and projection of group identity through group rights, *viz.*, rights of linguistic groups, tribal rights, rights of women and children etc.
3. It, therefore, becomes doubly difficult for minority rights to gain relevant recognition – against the excesses of the majority and against the individual rights of the citizenry.
4. If, however, a minority falls within the purview of a religious minority, there are additional problems that it has to face<sup>3</sup> –

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<sup>2</sup> Martti Koskenniemi, *From Apology to Utopia: The Structure of the International Legal Argument*, (Cambridge University Press, 2005)

<sup>3</sup> On how a religious based justification can be constructed in favour of a liberal political democracy see, Shuanna Rodrigues, ‘Abul Kalam Azad and the Right to an Islamic

- a. *first*, the liberal political space, which is usually also secular, offers less scope for the enjoyment of religious rights in the public space;
- b. *second*, the enjoyment of religious rights are usually understood from the prism of individual liberty, which in its essence erodes the group identity of the religious rights;
- c. *third*, if the majority falls under the category of religious majority, the ability of the religious minority to enjoy its religious rights is greatly stunted;
- d. *fourth*, if the religious majority is able to route its political choices through the machinery of the state, the minority is left with minimal options; and,
- e. *finally*, and most dangerously, if the very imagination of state before the eyes of the majority challenges the secular liberal ideals of the existing state, and additionally understands its boundaries as exclusive of the minority, the minority community falls at the very margins of the state.

### **III. Who is a minority citizen?**

1. There are diverse ways in which the word 'minority' is construed within a LCD – it may be translated as linguistic minority, as religious minority, as cultural minority or else as part of the specialized identity of marginalized community like the tribal etc.
2. What becomes important is the form which legal recognition of such a status gains.
3. Since the issue of minority-majority is an issue of identification for the purposes of providing benefit to the individual, it technically becomes subject-matter of a state's Constitution.
4. The Constitution of any state is both a political and a legal document – political in its origin and legal in its ramifications. In this context,

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Justification of the Indian Constitution' in Anupama Roy and Michael Becker Becker (eds), *Dimensions of Constitutional Democracy* (Springer, Singapore, 2020). For a more philosophical take see, Jurgen Habermas, Religion in the Public Sphere, *European Journal of Philosophy* (2006) 14:1, pp. 1–25. See also my invocation of the two articles in a recent blogpost, 'The False Promise of a Secular Hindu Rashtra', *The Indian Muslim*, April 7, 2020, <https://indianmuslim.me/2020/04/07/the-false-promise-of-a-secular-hindu-rashtra/>

therefore, any issue covering 'minority identity' is both a legal and a political question.

5. More specifically, and overriding the general protection accorded to the minorities, the Constitution may incorporate specific provisions providing special benefits to the members of the minority community – freedom to establish and administer their own institutions; protection of their language and/or culture through special designations; providing special representation in the legislature and/or state's other offices; and also through reservation either in study or in job.
6. The problems and/or benefits enjoyed by a minority citizen remain a debatable terrain depending upon the context.
7. The debates centring around the minority citizen covers a number of issues – lack of political representation, ill-suited legal protection, under-identification of her language and/or culture, active marginalization and/or targeted attacks based on her identity etc.

#### **IV. Muslim as a minority citizen in India**

1. Maulana Abul Kalam Azad through his works attempted to construct an Islamic justification to the liberal constitutional order in the Indian context. He developed a framework that adherents of Islam could 'endorse and employ in shaping a political conception for the future Constitution of India.'<sup>4</sup>
2. This only means that the Indian Constitution, in its present form, already contains the germ-seeds for a religion based political justification for Indian Muslims.
3. The constitutional protection provided to the minorities is quite robust, but only on paper. In practice, it has only been a problematic state of affairs.
4. Muslim minority in India falls at the margins of the state. There are a number of parameters against which this marginalization could be judged:
  - a. The lack of political representation - *Muslim MPs currently occupy 19 seats of the Lok Sabha (or 3.5 per cent of its members), the lowest*

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<sup>4</sup> Shuanna Rodrigues, 'Abul Kalam Azad and the Right to an Islamic Justification of the Indian Constitution' in Anupama Roy and Michael Becker Becker (eds), *Dimensions of Constitutional Democracy* (Springer, Singapore, 2020).

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*figure since 1952. Between 1980 and 2014, the representation of Muslim MPs in the lower house of India's Parliament has diminished by nearly two-third even as the share of Muslims in the population rose during the same period.*<sup>5</sup>

- b. The dropping representation in public sector/ government jobs, especially at higher positions – According to the Ministry of Minority Affairs statement in the Parliament, ‘Muslims have the lowest share of working people among all communities, as per the Census 2011 data.’<sup>6</sup>
- c. The rising rate of school/ college level dropouts – A decade and a half after the Sachar Committee highlighted the issue, a report from the National Statistical Office reveals that Muslims are on various yardsticks of academic marginalisation as bad or even worse than SCs and STs.<sup>7</sup>

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5 Christophe Jaffrelot and Gilles Verniers, ‘The Dwindling Minority’, *The Indian Express*, July 30, 2018 <<https://indianexpress.com/article/opinion/columns/muslims-politicians-in-india-bjp-narendra-modi-government-5282128/>>. See more at Ghazala Jamil, ‘Who Can Represent Muslims in Electoral Politics? Debates in the Muslim Public Sphere’, *Economic and Political Weekly-Engage*, Vol. 54, Issue No. 17, 27 Apr, 2019 (April 23, 2019) <<https://www.epw.in/engage/article/who-can-represent-muslims-electoral-politics>>;

Daniel Wolfe, Dan Kopf & Aria Thaker, ‘Why is Muslim political representation declining in India?’, *Quartz India*, May 22, 2019 <<https://qz.com/india/1617067/indian-election-2019-why-few-muslims-make-it-to-the-lok-sabha/>>; Nithya Subramanian & Shoaib Daniyal, ‘The Election Fix: Muslims are constantly discussed but seriously underrepresented in Indian politics’, *Scroll*, April 21, 2019 <<https://scroll.in/article/920747/the-election-fix-muslims-are-constantly-discussed-but-seriously-underrepresented-in-indian-politics>>; Basant Rawat, Kausharali Saiyed, Sandeep Pandey, ‘Lack of representation: Indian Muslims may end up as ‘new political untouchables’, *Counterview*, July 9, 2019 <<https://www.counterview.net/2019/07/lack-of-representation-indian-muslims.html>>; ‘India election 2019: The mystery of India's ‘missing’ Muslim politicians’, *BBC News*, May 9, 2019 <<https://www.bbc.com/news/world-asia-india-47315852>>; Bilal Kuchay, ‘In India's democracy, Muslims feel increasingly marginalised’, *Al Jazeera*, April 25, 2019 <<https://www.aljazeera.com/news/2019/04/india-democracy-muslims-feel-increasingly-marginalised-190419164503459.html>>

<sup>6</sup> Abantika Ghosh, Muslim working proportion lowest among communities, *The Indian Express*, February 26, 2016 <<https://indianexpress.com/article/india/india-news-india/muslim-working-proportion-lowest-among-communities/>>. See also, Monobina Gupta, Interview: Post Sachar Report, Condition of Indian Muslims Unchanged, *The Wire*, February 20, 2019 <<https://thewire.in/rights/interview-post-sachar-report-condition-of-indian-muslims-unchanged>>; Seema Chishti, Even if govt. is employer, Muslims fall off job map, *The Indian Express*, October 30, 2006 <http://archive.indianexpress.com/news/even-if-govt-is-employer-muslims-fall-off-job-map-----/15479/>; Subodh Ghildiyal, Muslim share in government jobs moving upwards, *The Times of India*, August 19, 2013 <<https://timesofindia.indiatimes.com/india/Muslim-share-in-govt-jobs-moving-upwards/articleshow/21906500.cms>>

<sup>7</sup> 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.;)>; Rehan Ansari, Christophe Jaffrelot on Indian Muslims

- d. The falling out of the Muslim economy – *The Muslim minority, the most deprived of communities in the Indian jobs market, doesn't yet figure on the radar of corporate India. Even the affirmative action (AA) framework, which the private sector was prompted to adopt and implement in the last decade, is largely focused on the Dalits, leaving the Muslims entirely to their own devices.*<sup>8</sup>

## V. CAA and the state of Indian Muslims

The Citizenship Amendment Act, 2019 hits the Muslim identity at two fronts – first, it marginalizes the Muslims by forcing them to prove their national identification in a concerted manner<sup>9</sup>; and second, in their protest against

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after 73 years of Independence, Muslim Mirror, August 14, 2020 <<http://muslimmirror.com/eng/christophe-jaffrelot-on-indian-muslims-after-72-years-of-independence/>>

8 Naren Karunakaran, 'Muslims constitute 14% of India, but just 3% of India Inc', Economic Times, September 7, 2015 <<https://economictimes.indiatimes.com/news/politics-and-nation/muslims-constitute-14-of-india-but-just-3-of-india-inc/articleshow/48849266.cms?from=mdr>>. For more see, Zia Haq, Untouched by economic growth: One in 4 beggars in India a Muslim, reveals census, Hindustan Times, July 30, 2016 <<https://www.hindustantimes.com/india-news/untouched-by-economic-growth-destitution-illiteracy-hurt-india-s-muslims/story-Lz5HhyifFkPxZ4pu5gT85N.html>>; Roshan Kishore, How are Muslims spread on India's economic map?, Live Mint, December 22, 2015 <<https://www.livemint.com/Politics/cbNuS293uoWByyEG8keFCJ/How-are-Muslims-spread-on-Indias-economic-map.html>>; Gallup, Muslims in India: Confident in Democracy Despite Economic and Educational Challenges, <<https://news.gallup.com/poll/157079/muslims-india-confident-democracy-despite-economic-educational-challenges.aspx>>; Omar Khalidi 'Indian Muslim Society and Economy', Oriente Moderno, 2004, Nuova serie, Anno 23 (84), Nr. 1, Islam in South Asia (2004), pp. 177-202, Istituto per l'Oriente C. A. Nallino; Syed Shahabuddin (1984) Economic status of the Muslim community in India: an overview, Institute of Muslim Minority Affairs. Journal, 5:1, 243-248, DOI: 10.1080/02666958408715896

9 See the following for reference – Tarushikha Sarvesh, Ayodhya, CAA and beyond: India's Muslims caught between compromised identity and cuts in citizenship rights, August 5, 2020 <<https://www.firstpost.com/india/ayodhya-cao-and-beyond-indias-muslims-8673901.html>>; Jayshree Bajoria, "Shoot the traitors": discrimination against Muslims under India's new citizenship policy, April 9, 2020, Human Rights Watch <<https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>>; Nayanima Basu, 'CAA, NRC could render huge numbers of Indian Muslims stateless, says Ashutosh Varshney', March 5, 2020, The Print <<https://theprint.in/india/cao-nrc-could-render-huge-numbers-of-indian-muslims-stateless-says-ashutosh-varshney/376008/>>; Puja Changoiwala, 'India's Muslims are terrified of being deported', Foreign Policy, February 21, 2020 <<https://foreignpolicy.com/2020/02/21/india-muslims-deported-terrified-citizenship-amendment-act-cao/>>; Sriram Lakshman, 'Citizenship Amendment Act will cause Muslims to face exclusion: U.S. panel on religions', February 21, 2020, The Hindu <<https://www.thehindu.com/news/national/cao-will-adversely-impact-muslims-in-india-says-uscirf/article30868490.ece>>; Soumya Shankar, India's citizenship law, in tandem with

the draconian law, it renders Muslims as being non-secular and communal.<sup>10</sup> In both of these instances, the Muslim identity in India is weakened in all its legal and political senses. The only option, therefore, is continuous assertion of the Muslim identity by channelling it through the existing ideals of the liberal constitutional democracy.<sup>11</sup>

## **VI. The Muslim minority citizen in the Corona context**

There has been a continuous political undercurrent that has offered to marginalize the Indian Muslim identity from the public space. The recent trends show a growing rate of such developments. It would not be wrong to state that the onset of the pandemic has only led to an increased marginalization of the Muslim populace in India. The marginalization seems to have engulfed the Muslim identity in all its social and economic constituents, as there have been reports about the rise of Islamophobia occurring from the pandemic context.<sup>12</sup>

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national registry, could make BJP's discriminatory targeting of Muslims easier, January 30, 2020, *The Intercept* <<https://theintercept.com/2020/01/30/india-citizenship-act-caa-nrc-assyam/>>; Jhalak M. Kakkar, *India's New Citizenship Law and its Anti-Secular Implications*, *Lawfare*, January 16, 2020 <<https://www.lawfareblog.com/indias-new-citizenship-law-and-its-anti-secular-implications>>; Citizenship Amendment Bill: India's new 'anti-Muslim' law explained, BBC, December 11, 2019; <<https://www.bbc.com/news/world-asia-india-50670393>>; Citizenship Act protests: Why fear has gripped Muslims in this Indian state, December 31, 2019, BBC, <<https://www.bbc.com/news/world-asia-india-50946271>>

<sup>10</sup> See for instance, Manas Firaq Bhattacharjee, 'Debate: Shashi Tharoor and the Liberal Paranoia of Muslims Asserting Their Identity', *The Wire*, January 18, 2020, <<https://thewire.in/rights/shashi-tharoor-muslims-cao-protests>>; Qudratullah Faraz, 'Protesting against CAA-NRC is a fight for Muslim dignity and identity, covering it under cloak of 'fight for Constitution' will be misleading', *First Post*, January 14, 2020 <<https://www.firstpost.com/india/protesting-against-cao-nrc-is-a-fight-for-muslim-dignity-and-identity-covering-it-under-cloak-of-fight-for-constitution-will-be-misleading-7904341.html>>

<sup>11</sup> Hilal Ahmed, 'Who represents India's Muslims? Thanks to CAA protests, we now know the answer', *The Print*, January 17, 2020 <<https://theprint.in/opinion/who-represents-indias-muslims-thanks-to-cao-protests-we-now-know-the-answer/350709/>>; Nizamuddin Ahmad Siddiqui, 'A Muslim narrative in the anti-CAA/NRC protests', *The Indian Express*, January 23, 2020 <<https://indianexpress.com/article/opinion/anti-cao-nrc-protests-muslim-narrative-6231996/>>; Nizamuddin Ahmad Siddiqui and Abu Affan Farooquee, 'Why Muslim protests are secular and they matter', *The Indian Muslim Blog*, <<https://indianmuslim.me/2020/03/24/why-muslim-protests-are-secular-and-they-matter/>>; Nizamuddin Ahmad Siddiqui, 'The false promise of a Secular Hindu Rashtra', *The Indian Muslim Blog*, April 7, 2020 <<https://indianmuslim.me/2020/04/07/the-false-promise-of-a-secular-hindu-rashtra/>>;

<sup>12</sup> *Time*, 3rd April 2020: It Was Already Dangerous to Be Muslim in India. Then Came the Coronavirus – <https://time.com/5815264/coronavirus-india-islamophobia-coronajihad/>; *The Print*, 9th April 2020: Covid an excuse to push Indian Muslims out of informal sector jobs. Apartheid the next step – <https://theprint.in/opinion/covid-an-excuse-to-push-indian-muslims-out-of-informal-sector-jobs-apartheid-the-next-step/398236/>; *The Guardian*, 13th April 2020: Coronavirus conspiracy theories targeting Muslims spread in India – <https://www.theguardian.com/world/2020/apr/13/coronavirus-conspiracy>

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It acts like hyenas – <https://theprint.in/opinion/indian-media-waging-holy-war-against-muslims-hyenas/400407/>; *Livemint*, 13th April 2020: The Religion of Business – <https://www.livemint.com/mint-lounge/features/the-religion-of-business-11586495537981.html>; *Mid-Day*, 13th April 2020: Burden Of Being A Muslim – <https://www.mid-day.com/articles/burden-of-being-a-muslim/22727299>; *Sify*, 13th April 2020: Islamophobia surges with Coronavirus in India – <https://www.sify.com/news/islamophobia-surges-with-coronavirus-in-india-news-columns-uenjEShgacid.html>; *Siasat*, 13th April 2020: How vocabulary was weaponised to target Indian Muslims – <https://www.siasat.com/how-vocabulary-was-weaponised-target-indian-muslims-1873598/>; *The Intercept*, 14th April 2020: The Coronavirus Is Empowering Islamophobes — but Exposing the Idiocy of Islamophobia – <https://theintercept.com/2020/04/14/coronavirus-muslims-islamophobia/>; *Siasat*, 14th April 2020: Indian media is waging a holy war against Muslims – <https://www.siasat.com/indian-media-waging-holy-war-against-muslims-1874163/>; *Wired*, 14th April 2020: The Rise of a Hindu Vigilante in the Age of WhatsApp and Modi – <https://www.wired.com/story/indias-frightening-descent-social-media-terror/>; *Geo News*, 14th April 2020: Indian Muslims faced attacks after officials blamed them for coronavirus spread: report – <https://www.geo.tv/latest/282715-muslims-attacked-lynched-in-india-after-officials-blamed-them-for-spreading-coronavirus-report>; *Gulf News*, 14th April 2020: COVID-19: And now it is ‘corona jihad’ in Narendra Modi’s hate-filled new India – <https://gulfnews.com/world/asia/india/covid-19-and-now-it-is-corona-jihad-in-narendra-modis-hate-filled-new-india-1.1586764709554>; *MSN News*, 14th April 2020: Coronavirus is another excuse to marginalise India’s Muslims – <https://www.msn.com/en-au/news/world/coronavirus-is-another-excuse-to-marginalise-indias-muslims/ar-BB12zT6v>; *Daily Hunt*, 16th April 2020: Doctors, scientists demand apology from Gujarat CM for discrimination between COVID-19 patients on faith – <https://m.dailyhunt.in/news/india/english/national+herald+india-epaper-natlher/doctors+scientists+demand+apology+from+gujarat+cm+for+discrimination+between+covid+19+patients+on+faith-newsid-178549586?ss=wsp&s=a>; *The New York Times*, 21 April 2020: In India, a Pandemic of Prejudice and Repression – <https://www.nytimes.com/2020/04/21/opinion/coronavirus-india.html>; *Arab News*, 21 April 2020: Locked down India sees surge in anti-Muslim rhetoric, attacks – <https://www.arabnews.com/node/1662376/world>; *The National*, 21 April 2020: Indian hospital shuns Muslims as coronavirus spurs discrimination – <https://www.thenational.ae/world/asia/indian-hospital-shuns-muslims-as-coronavirus-spurs-discrimination-1.1008876>; *The Wire*, 21 April 2020: India’s Coronavirus-Related Islamophobia Has the Arab World Up in Arms – <https://thewire.in/communalism/indias-coronavirus-related-islamophobia-has-the-arab-world-up-in-arms>; *Dawn*, 21 April 2020: Combating a regressive media in India – <https://www.dawn.com/news/1550988/combating-a-regressive-media-in-india>; *News Click*, 21 April 2020: Hindutva Has a Cost, Middle East Elite Remind India – <https://www.newsclick.in/COVID-19-Coronavirus-Hindutva-Middle-East-Elite-India>; *The Wire*, 21 April 2020: COVID-19: How the Kannada Electronic Media Is Baying for Blood – <https://thewire.in/media/covid-19-kannada-electronic-media-tablighi-jamaat>; *Geo News*,

## **VII. The Islamic conceptions of ‘belongingness’ and ‘othership’**

1. Imam al Shaybani in his classic book – *Siyar al Kabir* makes detailed mentions over the issue of belongingness in a Muslim State.<sup>13</sup> He mentions, inter alia, that individuals were all part of the Muslim nation *dar al islam* and that a mere entry into another territory (*dar al kufr*) would generally make the person an apostate.<sup>14</sup> This, however, does not include instances where one is forced to leave his land to gain protection in some other territory – Muslim migration to Abyssinia before Yathrib (Medina).
2. The migration from Muslim land, if done voluntarily and under no compulsion, was understood as leaving the brotherhood of the Muslim nation.<sup>15</sup>
3. This is not surprising as similar standards were applicable for quite some time between India and Pakistan after the partition of 1947.<sup>16</sup>

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21 April 2020: Backlash grows in UAE against rising tide of Islamophobia in India – <https://www.geo.tv/latest/284077-backlash-grows-against-rising-tide-of-islamophobia-in-india>; Gulf News, 20 April 2020: Understand the chronology in India: Let coronavirus hit, then spread fake news demonising Muslims – <https://gulfnews.com/world/asia/india/understand-the-chronology-in-india-let-coronavirus-hit-then-spread-fake-news-demonising-muslims-1.1587369038445>; The Hindu, 20 April 2020: Caught in the heightened arc of communal polemics – <https://www.thehindu.com/opinion/lead/caught-in-the-heightened-arc-of-communal-polemics/article31383203.ece>; The Indian Express, 20 April 2020, Language of war against virus has exacerbated the situation for Muslims – <https://indianexpress.com/article/opinion/columns/coronavirus-india-muslims-tablighi-jamaat-covid-19-deaths-apoorvanand-6369969/>; The Wire, 20 April 2020: It Was Naive to Expect They Would Forget Their Hatred Towards Muslims in a Crisis – <https://thewire.in/communalism/it-was-naive-of-us-to-expect-india-would-forget-its-hatred-towards-muslims-in-a-crisis>; News18, 20 April 2020, That Indian Secularism is A Fallacy Becomes Most Apparent against Backdrop of Covid-19 Crisis – <https://www.news18.com/news/opinion/that-indian-secularism-is-a-fallacy-becomes-most-apparent-against-backdrop-of-covid-19-crisis-2585427.html>

<sup>13</sup> Mohammad Hamidullah, *Muslim Conduct of State*, 7<sup>th</sup> Edition (Lahore, Sh. Mohammad Ashraf, not dated); Mahmood Ahmad Ghazi (trans.), Muhammad Shaybani, *The Shorter Book of Muslim International Law*, English Translation of Kitab al-Siyar al-Saghir, (Islamabad: Islamic Research Institute, 1998); Majid Khadduri, *The Islamic Law of Nations: Shaybani’s Siyar* (John Hopkins Press, Baltimore 1966); Jean Allain, Khadduri as Gatekeeper of the Islamic Law of Nations?, *New Approaches to the History of International Law and Islam*, Nijhoff / Brill Publications December 2018; Muhammad Munir, ‘*Islamic International Law (Siyar): An Introduction*’, *Hamdard Islamicus*, Vol. XXXX, No. 4, (October-December 2012), pp. 37-60, <http://ssrn.com/abstract=1835823>

<sup>14</sup> Shaykh Zuhili highlights the presence of a third zone – *dar al sulh* based upon the treaty relationship between the Muslim and non-Muslims nations. For details, Sheikh Wahbeh al-Zuhili, ‘Islam and International Law’, *International Review of the Red Cross*, Volume 87 Number 858 June 2005

<sup>15</sup> Majid Khadduri, *The Islamic Law of Nations: Shaybani’s Siyar* (John Hopkins Press, Baltimore 1966)

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4. The question of belongingness has also been part of the universal brotherhood among Muslims. The concept of Muslim *Ummah* can most closely be equated with the concept of *fraternity* under the Indian Constitution.<sup>17</sup>
5. The demise of Caliphate in Turkey and the emergence of nation-states throughout the world gave space for the emergence of nationality based identification.<sup>18</sup>
6. Even though nationalism and democracy, as defined through their Western templates, had been seen as an unwanted element in the Muslim milieu,<sup>19</sup> the post War world created an atmosphere where the Muslim majority nation-states came to populate the geography of the world.<sup>20</sup>
7. Citizenship and territorial demarcation of the statehood was soon accepted throughout the world, most visibly within the Muslim world (and especially the MENA region).<sup>21</sup>

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<sup>16</sup> Joya Chatterji, South Asian Histories of Citizenship, 1946—1970, *The Historical Journal*, Vol. 55, No. 4 (December 2012), pp. 1049-1071, Cambridge University Press

<sup>17</sup> The Preamble to the Indian Constitution locates *fraternity* in the following language – ‘We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic... and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation...’ This contextualization may be compared with the conception of *fraternity* as identified in the Preamble to the Charter of the Organization of Islamic Conference (OIC) - ‘In the name of Allah, the most Compassionate, the most Merciful We the Member States of the Organisation of Islamic Cooperation, determined: ... to be guided by the noble Islamic values of unity and fraternity, and affirming the essentiality of promoting and consolidating the unity and solidarity among the Member States in securing their common interests at the international arena...’

<sup>18</sup> Majid Khadduri, Islam and the Modern Law of Nations, 50 Am. J. Int'l L. 358 1956, pg. 370. Pierre-Alexandre Cardinal, Islam Between Modernity and Coloniality; An International Legal History of Iran from the Late Qajar Period to Pahlavism: A thesis submitted to McGill University in partial fulfilment of the requirements of the degree of Legum Magister, Master of Laws, Faculty of Law, McGill University, Montreal (November 2016)

<sup>19</sup> Abul A'la Maududi, *Islamic Law and Constitution*, Khurshid Ahmad (trans.) (Lahore: Islamic Publications Ltd, 1960)

<sup>20</sup> See, Majid Khadduri, *Political Trends in the Arab World: The Role of Ideas and Ideals in Politics* (The John Hopkins Press, Baltimore/London, 1970); Majid Khadduri, From Religious to National Law, Ruth N. Anshen (ed.), *Mid-East World Center* (New York 1956); Farhat Jacob Ziadeh, *Lawyers, the Rule of Law and Liberalism in Modern Egypt* (Stanford, California, Hoover Institution on War, Revolution, and Peace, Stanford University, 1968). For recent works see, William L. Cleveland and Martin Bunton, *A History of the Modern Middle East*, ed. 6<sup>th</sup> (Westview Press, 2016); Fred Halliday, ‘Nationalism in the Arab World since 1945’, John Breuilly (ed.), *The Oxford Handbook of the History of Nationalism* (OUP, Great Clarendon Street, 2013); Cemil Aydin, ‘Pan Nationalism of Pan-Islamic, Pan-Asian and Pan-African Thought’, John Breuilly (ed.), *The Oxford Handbook of the History of Nationalism* (OUP, Great Clarendon Street, 2013).

<sup>21</sup> For more on assimilation of ‘nationality’ by the Muslim majority States see, Mohammad Talaat al Ghunaimi, *The Muslim Conception of International Law and the Western Approach* (Martinus Nijhoff, The Hague 1968) footnote 1, pg 69; James P. Piscatori, *Islam in a World*

8. There has been most recently a renewed interest into the study of Muslim minorities in non-Muslim majority states.<sup>22</sup> This further explains why the issue of belongingness remains one of the most challenging issues to be tackled by the Muslim scholars throughout the world.<sup>23</sup>

### **VIII. Some questions that might engage us?**

Some of the guiding questions have been identified below. They might serve as starting points for further discussions:

#### **A. Political Issues**

1. How to construct the Islamic identity in the post-liberal era of religion based politics?
2. What could be the perceptive challenges that the Muslim populace might face in its demand for legitimate political recognition within the liberal democratic set-up established by the Indian constitution?
3. In what manner the demands for a valid recognition of Muslim liberal identity could be channelized?

#### **B. Legal Issues**

1. In what manner the debate over normative pluralism of the legal orders could benefit the religious law systems in India?
2. How do we protect *Shari'a* based legal institutions from the onslaught of the institutionalization of religious 'others'?
3. How could we re-imagine religious personal laws now?

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*of Nation States*, Royal Institute of International Affairs (Cambridge University Publications 1986) endnote 19, pg. 179; and, Will Hanley, *International Lawyers without Public International Law: The Case of Late Ottoman Egypt*, *Journal of the history of International Law* 18 (2016) 98–119, pg 117

<sup>22</sup> Upendra Baxi, 'Significance of *Fiqh al-aqalliyat* in Resolving the Muslim Personal Law Crisis (*Triple Talaq*) of Muslims in India', Manoj Kumar Sinha and Furqan Ahmad (eds.), *Dispelling the Rhetorics: Law of Divorce and Gender Inequality in Islam* (Indian Law Institute, New Delhi 2019). See also, Mohammad Umar, '*Triple Talaq* in Classical Islamic Jurisprudence and the Indian Conundrum', Manoj Kumar Sinha and Furqan Ahmad (eds.), *Dispelling the Rhetorics: Law of Divorce and Gender Inequality in Islam* (Indian Law Institute, New Delhi 2019)

<sup>23</sup> *Muslim Minorities, Fatawa Regarding Muslims Living as Minorities*, Message of Islam, London, 1998; *Fiqh of Muslim Minorities*, 2002-03; Alexandre Caeiro, *The Power of European Fatwas: The Minority Fiqh Project and the Making of an Islamic Counterpublic*, *International Journal of Middle East Studies*, Vol. 42, No. 3 (August 2010), pp. 435-449, Cambridge University Press; Uriya Shavit, *The Wasafī and Salafī Approaches to the Religious Law of Muslim Minorities*, *Islamic Law and Society* 19 (2012) 416-457 (Brill Publications)

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4. Whether Islamic law ideals could guide our existing legal processes? If yes, in what manner?
5. How do we dispel the myth of *Fiqh Aqalliyat* by legitimately employing the citizen/ ummah discourse?