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THINK TANK

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Department of Political Science

Founders' Semester, 2021-22, Volume 5

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The world entangles itself in complexities of belief, stigmas, law and order. The very connotation associated with the word 'right' and 'wrong' may seem ambiguous in the eyes of different people. The onus lies on us to unwind the system. We must explore these norms and dwell on the subjectivity of the vagaries across the globe. The fifth edition of the Think Tank brings you our very own alumni's interpretation of norms and flux in society.

Anushcka Joshi
Student Editor

Dedication

This edition of the Think Tank recalls the glorious ideals non-violence and Satyagraha pursued by the Father of the Nation Mahatma Gandhi. The world is torn apart by violence with the might is right principle threatening established values and setting up a sole intimidating narrative. The power of conviction fortified by truth and non-violence can herald far reaching changes, triumph over all obstacles and make humanity move forward towards progress. Let us try to imbibe these two ideals as a way of life. This would be our benign tribute to an extra ordinary personality the world has ever seen.

QUILL STROKES

A CRISIS OF EPIC PROPORTIONS

The world watched silently as the de jure fled the country stating that the bloodshed need to be avoided. A state collapsed like a pack of cards and the new rule called Taliban 2.0 unleashed its fury and strength dictating what is right by declaring an Islamic Emirate of Afghanistan in shambles. The world could watch in horror as panic stricken Afghans in sheer despair scrambled to get on board the jam packed carrier aircraft dangling precariously, some falling midair, some shot inside the airport. The medical and health crisis is grim with young infants, mothers critically ill and in urgent need of medical attention. The food crisis, collapse of the economy and banking services indicate that Afghanistan cannot be left to fend for itself. The need for international assistance to deal with a humanitarian crisis is massive. The EU has promised a package. The need is to rush in relief at the earliest. War ravaged Afghanistan resembles a ghost town with most of the basic facilities in tatters.

As States deliberate on the possibility of extending a helping hand vis-à-vis their prime national interest time is running out for Afghanistan. The US is shying away after having burnt its fingers and leaving behind an arsenal now used by the Taliban to flex its muscle. The post-cold war scenario did precious little to change the face of this country condemned to remain backward and in eternal stagnation. Afghanistan is in dire need of help. The world community cannot turn a blind eye. The reason is simple. If Afghanistan is ignored today, the crisis emanating there will see its ugly head turning up in our own backyard. The time is now or never.

Thajeb Ali Hazarika
Teacher Editor

DEVNEEL BASUDEV GOSWAMI
ISC BATCH OF 2016

EXAMINING MIGRATION IN ASSAM AND DECIPHERING THE LAW THAT ENABLES IT

The influx of migration and its impact on demography and politics in Assam in terms of identity is analyzed by Devneel Goswami]

The signing of the highly contentious Citizenship Amendment Act (2019) brought with it a tumultuous storm of agitation across North East India, particularly in Assam. During protests against the then Citizenship Amendment Bill (2019), Assam witnessed a complete shutdown in internet connectivity sponsored by the State in order to hinder organised mob violence- such was its degree. Curfews paralysed most major towns and cities as the Indian Army was handed the reins of law and order. Even as anger against the controversial piece of legislation simmered across the country, in Assam it boiled over- spilling out into the streets with red-hot intensity and resulting in the destruction of government buildings and public property. As the outrage against this Act reached a new crescendo, with members of the Assamese community protesting in the National Capital and beyond, the question of what threatens the multilateral fabric of the Assamese identity rose once again in the minds of the people.

The Citizenship Amendment Act (2019) makes an amendment to the Citizenship Act (1955) of the Indian Constitution, making a provision for "any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014" to apply for citizenship in India. Keeping the obvious security concerns from intelligence agencies of India's neighbours aside, the act paves the way for the legitimation of millions of illegal migrants in India. While the influx of illegal migrants from Bangladesh (and erstwhile East Pakistan) has become an issue of obvious security and economic concerns,it has already caused far-reaching changes in demography, land ownership, and its indigenous culture and tradition with regard to Assam. With Assam's proximity to the aforementioned foreign region and a largely porous international border between them, illegal immigration has been a regular occurrence, exacerbated by economic needs and political motives. On staring down the annals of History, one can identify several waves of large-scale migration which provide ample evidence of the process by which this went on almost unchecked and how the indigenous people of Assam became a minority in their own state.

MIGRATION INTO ASSAM

In contemporary Indian History, the first instance of a sizeable demographic shift in Assam was recorded during the governance of the British administration in the latter half of the 19th century. The British, under the aegis of the Assam Company, began to import

indentured labourers for its extensive plantations in Assam. Made possible with the passing of the Transport of Native Labourers Act (1863), the British administration then passed the Bengal Acts of 1865 and 1870 which streamlined the process of transfer of indentured labourers (Jayeeta Sharma: 2008). In 1867, it was found that from the 34,433 tea garden labourers in Assam, 22,800 or more than two-thirds of them had been imported. By 1884, this number rose to 180,831 adult labourers in the tea gardens of Assam out of which 102,557 were men and 78,274 were women. It is estimated that only 5.5% of the aforementioned labour force was from Assam. The Santhal Parganas from Chotanagpur made up 44.7% of the lot while Bengal and the North West Frontier Province are thought to have supplied 27.2% and 21.6% of the workforce respectively. The rest of the labourers were brought in from Nepal, Madras and Bombay (Jayeeta Sharma: 2009).

Migration to the tea plantations of Assam amplified even further at the turn of the century and British legislation in the form of the Inland Emigration Act (1893) and the Assam Labour and Emigration Acts of 1901 and 1915 made sure that a steady stream of workers poured into the state by road or by steamers and later even the railways. By 1901, there were an estimated 645,000 indentured labourers living in Assam (Jayeeta Sharma: 2008, 2009).

At the turn of the century, the Partition of Bengal in 1905 resulted in a significant democratic and political change in Assam. Citing administrative reasons, the then Viceroy of India Lord Curzon partitioned the province of Bengal into West Bengal (comprising the former province's western districts along with Bihar and Orissa) and East Bengal (consisting of erstwhile Bengal's eastern districts which were grouped with Assam). East Bengal, being a Muslim majority district, comprised of a large number of Bengali Muslims, many of who migrated into the relatively sparsely populated Assam in search of land. The majority of this influx is reported to have come from Mymensingh, one of the most densely populated districts of East Bengal. The district of Goalpara accounted for about 118,000 migrants alone, making up 20% of the district's population. (Myron Weiner: 1983)
The Partition of Bengal was annulled in 1911 but the region of Sylhet, which had a strong Bengali majority, was made a part of Assam. The intrusion of such a large number of Bengalis into the state made the Assamese fear of being swamped by them even stronger (Governor's Report: 1998). Bengali replaced Assamese as the language of the judiciary in Assam in 1836 and soon became the medium of instruction in school. The decision to solely use Assamese in schools and in the administration wasn't reverted to until 1874 but in the almost four decades gone by, Assamese literature had suffered a decisive blow and so had its culture (Bose: 1989). By 1900, a majority of posts in the Assamese administration had been occupied by Bengali Hindus. This parallel migration of the non-Assamese who came with a distinct culture and heritage from the people of Assam caused much resentment among the Assamese community who feared losing their identity. For the first time, the Assamese became politically conscious of their being and resentful of the demographic changes taking place within their state (Barpujari: 1998).

The ominous knell of the British policy of "divide and rule" reverberated into the minds of communal fanatics in India and strengthened the idea of the "two nation theory"- the proposition that the ideals and aspirations of Hindus and Muslims in India were not only different, but also opposed to each other such that they could not coexist in the same nation (Latif Ahmed Sherwani: 1977). This idea found prominent mention for the first time in Sir Muhammad Iqbal's address of the 25th session of the All India Muslim League in 1930. As proponents of this idea grew, so did the search for obtaining the idea of Pakistan- a separate nation for Indian Muslims. The demand for Pakistan as a separate Muslim nation, propounded vociferously by the Muslim League, also necessitated the demand for a separate piece of land for the residents of the proposed Muslim nation. The claim to this land had to be backed by rationale- the proponents of Pakistan could only ascertain their claims to Muslim majority areas keeping in line with the two-nation theory. The "North Western and Eastern Zones of India" seemed to be the ideal choices given the fact they commanded a Muslim majority in the populace (Latif Ahmed Sherwani: 1977). However, the problem lay in the fact that it was only a fraction compared to the land that would constitute an independent India in the near future.

Hence, advocates of Pakistan began to encourage the migration of Muslims into Assam and its surrounding areas in order to lay claim to the land as a part of the separate Muslim nation (Myron Weiner: 1983). Given Assam's close proximity to Bengal and its sizeable Muslim population, a further wave of Bengali speaking Muslims made their way

Image source: https://theprint.in/last-laughs/mamata-banerjee-fears-civil-war-and--uk-asks-for-mallya-videos/92131/

into the state and settled themselves. The numerically superior Bengali Muslims were able to win state elections in Assam and gain control of its administration. Notorious for leveraging this position to facilitate the migration of Bengali Muslims into the state was the government of Sir Syed Muhammad Saadulla, the Chief Minister of Assam from 1937 to 1946. Under the slogan of "Grow more Food", his Muslim League Government brought in Bengali Muslim peasants into Assam for cultivation but which Lord Wavell, the then Viceroy of India, described as an excuse to "grow more Muslims" in Assam (Wavell; The Viceroy's Journal, London: Oxford University Press, 1978).

The Census Report of 1931 put the number of people who had migrated to Assam from 1921 to 1931 at 121,698. It also warned of "Muslim cultivators from Mymensingh districts in Bengal" flooding the lower districts of the Brahmaputra valley in search of land and livelihood. They were reported to pose a serious threat to the language, nature and religion of the indigenous people by superimposing their own and in a way that the people of the state would be assimilated into the Bengali majority areas of Sylhet. In the Cachar plains of the Surma valley which had been a stronghold of the indigenous Kachari tribal community, the Kacharis reportedly became a minority to the Bengalis and held a majority in numbers only in the North Cachar Hills. Moreover, the princely state of Cooch Behar was the only state in 1921 which reported a decrease in its population. This decrease almost entirely amounted to Hindus and its related tribes such as the Koch, Mech and Poliya being pushed out by the expansion of settled cultivation eastward into Assam (Census Report: 1931).

In 1947, independence was secured for a hefty price- the Partition of India into India and Pakistan. If the Muslim League demands had made it probable, the Hindu-Muslim riots that followed the final days of colonial rule had made it inevitable. On 14th August, 1947 Pakistan came into being in the form of West Pakistan and East Pakistan on the respective western and eastern borders of India. East Pakistan on India's eastern border comprised of Muslim majority East Bengal and Sylhet along with the Hindu majority district of Khulna and the scarcely populated Buddhist majority Chittagong Hill Tracts. The demand for Assam to be a part of Pakistan had been rejected, but the Bengali speaking Muslim settlers who had been moved into the state over the past few decades continued to reside within the state. They were joined by a fresh wave of settlers brought about by the migration of Muslims into East Pakistan from India and the movement of Hindus from the former to the latter. As hundreds of thousands of refugees relocated to live in the country of their choice or escape persecution, they spread out across the region of Bengal and beyond. Around 110,000

refugees from Sylhet made their way into the district of Karimganj in Assam (Kamra: 2000). The Census Report of 1951 counted 274,000 refugees consisting largely of Bengali Hindus who had entered Assam since post-Partition.

As an independent India marched ahead as a democracy, another wave of migration began in the form of trickling streams of people from East Pakistan, looking to find better opportunities in West Bengal and the North Eastern states of Manipur, Tripura, Meghalaya and Assam. An 1800 kilometre long border which was largely non-existent and undemarcated made it a safe bet to cross over. The calculation of the toll on Assam became difficult when it was found that most of the refugees reported their birthplace as Assam on being questioned by officials. The erstwhile barrage of Bengali Muslims continued into Assam as well- a fact which could only be ascertained when it was found out that Bengali Muslims correctly reported their religion, if not their mother tongue. On examining the rate of growth of Muslims in Assam, it was concluded that 221,000 Bengali Muslims had made their way into the state from 1951 to 1961. Almost all of them had entered illegally from East Pakistan (Myron Weiner: 1983).

As discussed before, the year 1971 bore witness to the Bangladesh Liberation War which triggered another wave of migration into India. The Pakistan Army and its associated militias unleashed a "reign of terror" upon the citizens of East Pakistan, culminating into a spree of armed violence, rape, extra-judicial murders and the large scale extermination of political opponents (Lisa Sharlach: 2000, U.S. Consulate (Dacca) Cable, Selective Genocide, March 28, 1971, Confidential, 2 pp). Political leaders from the troubled country demanding the creation of Bangladesh found asylum in India while an estimated ten million refugees fled across the border and into India by 1971 (Ganguly: 2001). As the then Indira Gandhi government struggled to feed and shelter the refugees, let alone rehabilitate them, Assam's population increased by 36.3% or by 5.3 million people from 1971 to 1981, much higher than the all India rate of 24.6% or 2.6 million. The aforesaid can be used to rightly assume that around 1.7 million migrants had entered Assam in that particular decade (Myron Weiner: 1983), 100,000 of which never left the state when the war ended and adopted it as their own (Bipan Chandra, Mridula Mukherjee, Aditya Mukherjee: 2008).

Thus, over the course of more than a century a stream of migrants poured into the state of Assam predominantly from East Pakistan and Bangladesh for a variety of reasons. The resentment which had been built up in the minds of the Assamese people by then could not contain itself any longer and erupted into a violent populist movement across the state which came to be known as the "Assam Andolan".

ASSAM AGITATION (1979-85)

Assam Andolan or The Anti-Foreigners Movement in Assam denotes the turmoil in Assam from 1979 to 1985 consisting of mass protests and later violence in order to pressurise the government into action against illegal aliens in the state. While a historical examination of migration in Assam shows us the reasons for the pent up frustration and resentment of the indigenous Assamese, it was in 1979 that the Assamese realised their right to a just and fair franchise was in danger too. In mid-1979 during the preparation of the electoral rolls for a bye-election of the Mangaldoi constituency in Assam, 47,000 names were suspected of being that of illegal aliens. On investigation (Registration of Electors Rules, 1960) 36,000 names were removed from the rolls out of which 26,000 or 72% of the names were confirmed to be those of non-citizens (P.S. Reddi: 1981). This clearly established the presence of foreigners with no rights to citizenship gaining entry in electoral politics in Assam and thus becoming direct participants in the deciding the political leadership and future of the state. The people of Assam led by the All Assam Students Union (AASU), All Assam Gana Sangram Parishad (AAGSP) and a coalition of several political, cultural and literary groups demanded the central government to immediately seal the state's borders to prevent further illegal entries, postpone elections until all the non-citizens had been identified and disfranchised and to remove any illegal foreigner who had entered Assam after 1961. When the Election Commission of India decided to go ahead with the General Elections of 1980, the leaders of the movement declared a boycott of the upcoming elections (Bipan Chandra, Mridula Mukherjee, Aditya Mukherjee: 2008).

The intervening years of the movement saw a complete breakdown of law and order in Assam characterised by long drawn out campaigns of civil disobedience bringing the economy to a halt, general strikers of workers and government employees which often took a violent turn, looting and destruction of public property, frequent political instability, imposition of President's rule and widespread

ethnic violence (Bipan Chandra, Mridula Mukherjee, Aditya Mukherjee: 2008). The decision to hold state elections in 1983 by the then Indira Gandhi government led to the Nellie Massacre which is described as one of the worst incidents of ethnic violence since the Second World War. The attack at Nellie, located some 45 kilometres from Guwahati along the southern bank of the Brahmaputra and comprising of thousands of Muslim peasants who had migrated over the years from East Pakistan, was perpetuated by mobs of Lalung tribespeople along with some Assamese who attacked the Muslim peasants with sticks and sharp weapons. Official estimates cited that around 3000 lives were lost in the tragedy while unofficial estimates pinned the figure at over 10,000 (Myron Weiner: 1983).

In a bid to immediately appease the Assamese and bring an end to the violence, the Government of India passed the Illegal Migrants (Determination by Tribunal) Act in 1983. The IMDT Act, as it came to be popularly referred to, provided for the setting up of Tribunals in each district to detect and deport foreigners. Each tribunal in the districts was to be presided over by retired district/additional district judges. An Appellate Tribunal was also to be set up to hear appeals, presided over by two retired High Court judges.

The principal years of the Anti-Foreigners Movement in Assam came to an end with the signing of the Assam Accord in 1985. Signed between the All Assam Students Union (AASU), All Assam Gana Sangram Parishad (AAGSP) and the governments of India and Assam, the Accord granted full citizenship to the migrants who had come to Assam until 1961. It took away the voting rights of all the illegal entrants of Assam between 1.1.1966 and 24.3.1971 for a period of ten years while giving them all other rights of citizenship. All the illegal entrants coming into Assam were to be detected in accordance with the provisions of the Foreigners Act (1946) and those entering after 24.3.1971 were to be deported (Bipan Chandra, Mridula Mukherjee, Aditya Mukherjee: 2008).

THE LONG STRETCHED ARM OF THE LAW

The IMDT Act was a prominent piece of legislation which became a deciding factor for the future of migrants in Assam. However, it came under intense criticism for its provisions that seemed to favour the immigrants rather than the indigenous population of Assam. Its controversial provisions became infamous as directed in a way that the process of detection and expulsion of illegal aliens from Assam became an increasingly difficult process. For instance, a person could register a complaint against a suspected immigrant only after depositing a certain fee and if the latter was living within the same police station's jurisdiction as the former's place of residence. Given the hundreds of thousands of foreigners allegedly present in the state (Ibid.) and the common man's reluctance to be involved in legal proceedings, it presented a serious deterrence towards the Act's implementation.

The history of legislation to deal with the foreigner issue however, goes back to almost the beginning of the 20th century. The British Administration in India had enacted several laws for the detection and deportation of foreigners while an independent Government of India had subsequently enumerated provisions for the same in the Constitution. A close examination of the aforementioned along with the various schemes undertaken to uphold them gives us a clearer picture of how they were instrumental in the making of Assam's current demography and, to a large extent, of India as a whole.

The power of the Government of India to make laws on the issue of foreigners trickled down into the Indian Constitution from the Passport (Entry into India) Act (1920) which empowered the government to mandate the possession of a "passport" issued by the "prescribed authority" for any person entering India and to prohibit the entry of a person who attempted to enter the country without a passport. In this way, the government could keep a check on all persons entering India. This system of checks was taken further with the passing of the Registration of Foreigners Act (1939). It called for the maintenance of a registered record of foreigners coming into, departing from or moving within the country. The powers enumerated in this Act were conferred once again in the Foreigners Act (1946) along with the power to prohibit, regulate or restrict foreigners entering into, departing from or residing within India. With the aforementioned powers in hand, the Government of India acquired the authority to enact laws on the movement of foreigners and decide their future. In this regard, the term "foreigner" itself has been subject to change including the connotations it presented and still presents.

Enumerated within the Registration of Foreigners Act (1939) was an Indian administration's first definition of the term "foreigner" which it defined as a "person who is not a citizen of India". While this

definition remained the same for the Foreigners Act (1946) it was replaced with the word "immigrant" in the Immigration (Expulsion from Assam) Act (1950). The Act itself omitted a definition of the term but it referred to an immigrant for the purposes of the Act as a person or a class of persons who had had been residing outside India but had since come into Assam after the commencement of the Act. The change in language can be used to ascertain the acknowledgement of the fact by the government that there was a wave of ongoing migration into Assam particularly from East Pakistan since it was in the state's proximity. However, it did not apply to migrants who had fled East Pakistan due to civil disturbances or for fear of persecution. As a result, the ongoing wave of migration into Assam continued (Ibid.) and the law allowed the immigrants to settle within the state.

The infamous IMDT while referring to the Foreigners Act (1946) for the definition of "foreigner" chose to also define the term "illegal migrant" for the purposes of this Act. The term illegal migrant was defined as referring to a foreigner who had entered India from the 25th of March 1971 without a valid passport or other prerequisite permissions and documentation. This implied that all those foreigners who had entered India illegally and settled down from 1947 to 1971 were not illegal migrants, including the hundreds of thousands of foreigners who had entered Assam during the aforementioned years and made it their home (Ibid). The leaders of the Anti-Foreigners' Movement had demanded the cut-off year for illegal migrants as 1961 which, in hindsight, offers 14 years from 1947 for immigrants escaping persecution to settle down in Assam. Keeping the cut-off year as 1971 gave legitimacy to another decade of unchecked migration from 1961 to 1971. The Citizenship Act (1955) did not even contain the term "illegal migrant" within its provisions. It was inserted and defined only in 2003 with the passing of the Citizenship Amendment Act (2003).

One of the most empowering aspects of the Passport (Entry into India) Act (1920) was that it vested the Power of Arrest in any officer of the police from the rank of a sub-inspector and above. The arresting officer was to take the accused to a Magistrate having jurisdiction in the case or to the nearest police station without any unnecessary delay. The central government was entitled by the Act to direct an order for the removal of a contravening foreigner while the same could also be enforced by any officer of the central government. The provisions in the Registration of Foreigners Act (1939) with regard to this were derived from the Foreigners Act (1946) which gave the right of verification of citizenship and the expulsion of a foreigner without valid documentation to the District Magistrate or the Police Commissioner of an area and, in their absence, to the Superintendent of Police of an area. In the Immigration (Expulsion from Assam) Act (1950), the same was bestowed upon any officer subordinate to the central government and the Government of Assam. Similarly, the Citizenship Act (1955), in addition to the powers granted by the Foreigners Act of (1946), empowered the central government to deprive a person of their citizenship after due consideration of certain conditions.

Instead of the IMDT Act empowering the government even further to be able to effectively discharge its duty of detection and deportation of illegal migrants, its provisions chose to entrust these powers into the then newly established tribunals instead. At the time of its passing in 1983, the Power of Arrest was not even inserted into the IMDT and the "prescribed authority" only had reporting and investigating powers thereby severely undermining the efficient implementation of the Act. The Power of Arrest was laid down in the IMDT only with the passing of Act 24 of 1988 after 5 long years of the passing of the original Act. The amendment vested the Power of Arrest in police officers not below the rank of Superintendent of Police. Hence, the Act functioned without any real power of intervention in its initial years.

The IMDT's most controversial feature by far was the provision relating to Burden of Proof. In contrast to legislation of the past, in which the proof of citizenship of a person was to be provided by the person himself, the IMDT placed this burden onto the state administration and the complainant. According to the Registration of Foreigners Act (1939) a suspected foreigner on being questioned by the authority had to produce their proof of identity on demand. The Act also explicitly mentioned that the Burden of Proof of whether the accused was a foreigner fell completely on the accused as they had the onus of proving their Indian citizenship. The responsibility of furnishing proof that an accused was not a foreigner also fell on the accused himself in accordance with the provisions of the Foreigners Act (1946), thus reiterating a clause that had since become convention. With the passing of the IMDT, in case an accused was named in a complaint on the suspicion of being a foreigner, it was

"The IMDT's most controversial feature by far was the provision relating to Burden of Proof. In contrast to legislation of the past, in which the proof of citizenship of a person was to be provided by the person himself, the IMDT placed this burden onto the state administration and the complainant. "

the "prescribed authority" or the state administration who became the investigating agency. The Burden of Proof was thus transferred onto the government which had the onus of furnishing the necessary proof. Going against the internationally established practice of the law holding the accused "guilty" until proven otherwise, this Act undermined this set precedent and turned it on its head. When the rate of migration is taken into account even from the time of Independence (Ibid.) along with the intermingling of foreigners with each other and the people of Assam for over three decades, many of who had married and reproduced in the state by then, obtaining a simple document such as a ration card which could be used as an identity proof was nothing more than a easily exploitable convenience.

With such roadblocks in place hindering the implementation of the Act it comes as no surprise that the tribunals, functioning far below their capacity, produced disheartening figures of detection and deportation. In the district of Dhubri itself, the Superintendent of Police could find merit in only 15,921 cases out of the 46,882 cases filed against alleged foreigners from 1983 to 1997. Out of these, 7,940 had died and 2,838 had reportedly 'shifted' their homes by the time their respective cases were brought to trial. Moreover, at least 5,143 persons from among the accused vanished from the state as they were declared 'untraced'. It can only be assumed that they escaped before being brought to justice, moving away to other safer parts of the state (Sanjoy Hazarika: 2000). By then, the Act was functioning in name only. Out of the 30 tribunals which were to have been set up across the districts of Assam, only 16 had been approved. By 1998, 11 of them had become defunct with only one person on the bench against the required quorum of two. In 2005, after a writ petition had been filed by then Assam Gana Parishad (AGP) MP Sarbananda Sonowal, the Supreme Court struck down the IMDT Act as unconstitutional and finally brought it to its long delayed end (Economic Times: 2005).

The Citizenship Amendment Act (2019) added further complications to an already convoluted process. As opposed to paving the way for the swift removal of illegal migrants from Assam, it created further inroads for migrants to enter the state and India as a whole, thus enabling them to adopt it as their homeland. The Act added an exemption to the definition of 'illegal migrant' in the Citizenship Act (1955). All those persons belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan who had entered India until 31.12.2014 were exempted from being classified as illegal migrants in lieu of this Act. By passing this Act, the legislation in question shows a serious gap in comprehending the nature of the demography of illegal migrants who had entered the country.

While contemporary historical records show that the larger share of illegal migrants entering Assam

are Bengali Muslims from erstwhile East Pakistan and Bangladesh respectively (Ibid.), evidence finds ample record of mass migration of the exempted communities as well, particularly for the last half of the 20th century. Bengali Hindus from East Pakistan continued their march onward into India, particularly in Assam long after Independence had been achieved. The first few years provided for an almost unrestricted trans-border movement fuelled by the discrimination and oppression faced by Bengali Hindus under the East Pakistan administration (Governor's Report: 1998). A momentary examination of the Immigration (Expulsion from Assam) Act (1950) even confirms the Indian State's acknowledgement of the aforesaid exodus. The Act provides an exemption to immigrants residing in Assam who had moved in from Pakistan "on account of civil disturbances or the fear of such disturbances" from being expelled from India or Assam by the central government. Not only is this an acknowledgement by the Indian government of the civil disturbances occurring in East Pakistan which resulted in mass migration but also a guarantee by the Indian State that the migrants residing in Assam would not be expelled. Moreover, the official census of Bangladesh shows a decline in the number of Hindus living in the country between 1971 and 1989. The Hindu population in Bangladesh declined by more than 390,000 between 1971 and 1981 and by over 360,000 from 1981 to 1989. Cumulatively, the reduction in the number of Hindus by a whopping figure of over 750,000 in Bangladesh only can be rightly explained through their migration into Assam and other parts of India which lie in its geographical proximity (Governor's Report: 1998).

Besides Bengali Hindus, the mass migration of Chakmas from Bangladesh also begs consideration. Originating from the Chittagong hill tracts in Bangladesh, the Chakmas are followers of Buddhism. In the early 1960s, the flooding of the Kaptai Dam on the Karnaphuli River washed away about 655 kilometres of their homestead and displaced around 100,000 people, 70% of which were Chakmas (Scroll. in: 2017). Thousands of displaced Chakmas crossed over to India and landed in the Lushai Hills district of undivided Assam (now Mizoram) as refugees. The government of Assam settled them in the Tirap, Lohit and Subansiri divisions of the North East Frontier Agency (NEFA- now Arunachal Pradesh). Between 1964 and 1969 14,888 Chakma refugees belonging to 2,748 families were settled in this region (Indian Express: 2017). The

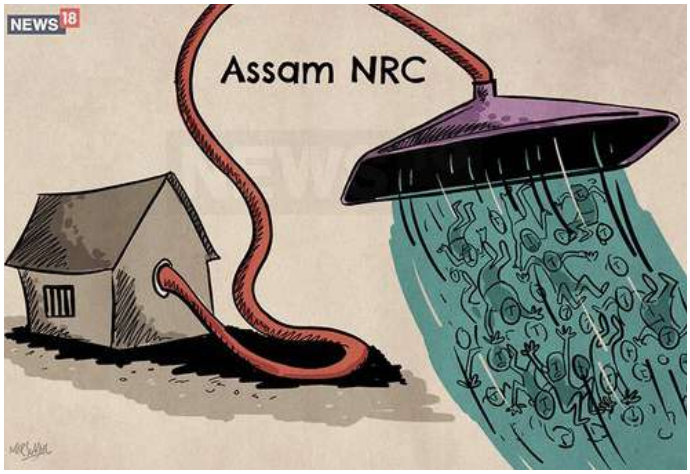

Image Source: https://hindi.news18.com/news/nation/nrc-more-dangerous-than-imdt-act-if-even-1-genuine-citizen-left-out-says-rss-2374768.html

Chittagong Chakmas' inclusion in Bangladesh after the fall of the East Pakistan in 1971 was resented by them, with fears of their distinct cultural, religious and ethnic identity being trampled by the newly formed Muslim majority nation. By 1972, the Chakmas began to demand autonomy for themselves with many of them forming the Shanti Bahini which sought to initiate an armed struggle against the State administration. The resulting violence unleashed against the group by the Bangladesh Army forced large swarms of the Chakmas to flee the country and seek asylum in India. A 1987 report claimed that not less than 45,000 Chakmas had crossed over into India and landed in Tripura within just over a fortnight in March that year (India Today: 1987).

In a white paper published by the Government of Arunachal Pradesh in 1996, it was discovered that the population of the Chakma refugees settled in the state had increased by 300% with their numbers growing to over 60,000 in 1995. Most of them were engaged in cultivation but many of them were performing odd jobs in Assam and other neighbouring states of the North East region (Indian Express: 2017). The Chakmas in Arunachal Pradesh are bereft of any citizenship rights since they fall into the Inner Line Permit (ILP) area which grants special rights to the indigenous people of the state. However, the Chakmas which remained in Assam, Mizoram and Tripura after their exodus were granted citizenship rights and recognised as a Scheduled Tribe. The passing of the Citizenship Amendment Act (2019) provides a path for the remaining Chakma refugees to gain full citizenship if they move out of Arunachal Pradesh. For a community which is suffering due to the denial of basic citizenship rights, moving out of the state into another which has the potential to grant them the same does indeed seem like a viable option. Hence, the

Act presents the Chakmas an opportunity to drastically alter the demographic structure of the states of North East India including Assam and become instrumental in their political future.

The large scale influx of the communities exempted by the Citizenship Amendment Act (2019) into India, and who live within its boundaries as refugees or have settled both legally and illegally into its being, have no more reason to be considered for citizenship than their Muslim counterparts who arrived in India in the same way. Seeking to validate their citizenship only legitimizes the takeover of land, natural resources and economic opportunities from the indigenous communities of Assam and is in direct violation of the Assam Accord (1985). Information by the Home Ministry of India in a Right to Information petition filed in 2009 revealed that illegal immigrants numbering 13,500 from Afghanistan and 9,900 from Pakistan were living in the country. Among them were many Sikhs as well whose VISAs had expired and were hence overstaying their welcome (Hindustan Times: 2011). The exclusion of the exempted communities from the Act leads to the numbers of the aforementioned communities who had illegally migrated to India or are illegally staying in India to be grossly underestimated. In reality, these numbers are far higher and granting them citizenship would only exacerbate the demographic challenges which the people of Assam and India as a whole are already reeling under.

CONCLUSION

The beginnings of the large-scale changes in the demographic profile of Assam were marked by the desire for colonial expansion and corporate greed, followed by administrative change and divisive rule. In the backdrop however, the stringent need for economic means continued to play a pivotal role in the search for land. Indeed, agriculture played a crucial hand in dealing the drive towards Assam in search of land and sustenance. The seeds of communalism also bore fruit, paving the way for the mass movement to acquire a new crescendo altogether. In the years during and following the emergence of the two independent nations, while the dire need for sustainable living continued to replenish the steady stream of migration, it was war that caused the boiling pot to spill over and change the demographic nature and socio-economic character of Assam and its surrounding areas permanently.

The Anti-Foreigners Movement in Assam marked a turning point in the history of migration in the state. It brought the exasperation of the masses to the political forefront and invoked them to demand their exclusive land rights which had been denied to them by the law for decades. While the British had used the law to identify and expel the migrants, the language and provisions of the Constitution of India crafted by subsequent independent administrations of the country seem to have gradually extended the rights of Indian citizenship to illegal aliens. Assam has been a victim of mass migration for almost two whole centuries and now faces the brunt of a law which enables it even further. Once implemented, the Citizenship Amendment Act (2019) has the potential to increase the burden of migration and legalising the existing illegal aliens in the state even further as it provides the clearest path to Indian citizenship yet for the illegal migrants. With the sensitive indigenous Assamese community having become a minority in their own state, the state is in dire need of legislation which puts a complete stop to mass migration and empowers the state to forge its own political future.

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SRIPARNA GOGOI
ISC BATCH OF 2016

WHO PLAYS THE ORCHESTRA? STUDYING CROWD PSYCHOLOGY IN MODERN INDIA

[The triggers of exciting the crowd and its use by politicians is sought to be understood by Sriparna Gogoi as she probes how narratives are built up]

In 2015, Danny Boyle (famously known by Indians for directing Slumdog Millionaire) released a film called 'Steve Jobs.' Needless to preface, the film is a dramatic narration of the professional and personal struggles of Steven Paul Jobs, a businessman whose identity is unanimously tied with Apple Inc. In one fervid but brilliantly enacted interaction between Jobs and Apple co-founder Steve Wozniak, the latter asks, "Everything was designed by someone else… so, how come ten times a day I read Steve Jobs is a genius, what do you do?" To this, Jobs says, "I play the orchestra…you're a good musician, you're the best in your row." Now, this is an article about crowd psychology and the rabid politics of influence. What does a biographical drama have anything to do with that? I agree. It is not about Jobs, technology, films, or even seemingly 'inspirational' stories of billionaires. But by the end of this article, if you can contest, consent to, or find the symbolism behind 'who plays the orchestra?' then I believe that it would have served its purpose.

Psychology as a science differentiates itself from sociology by studying the 'individual' in various contexts, as opposed to the latter studying 'groups.' By that logic, even the term 'crowd psychology' is ironical. Crowd psychology concerns itself with the behaviours and thought processes of both the individual crowd members and the crowd as an entity. It was in 19th century France that social scientists used phrases like 'mob mentality' and 'de-individuation' to refer to crowds. They are supposedly devoid of rationality or forethought, and are penetrated by debilitating emotion. It is important to consider the context of this conceptualization. 19th century France was pregnant with political instability and voracious debates on geopolitical phenomena. And therefore, the mystique of group influence is bound to have a blasphemous tonality. But crowd psychology is more complex than that. In 1951, psychologist Solomon Asch performed experiments to measure the effects of majority group belief and opinion on individuals. An unsuspecting participant was put into a room with seven confederates who were to match their responses in a task. They were asked to state which line (among 3) was most similar to a given target line out loud. The answer was visibly evident. However, the majority (7/8 people were confederates) in the experimental groups had agreed to respond incorrectly. Across 12 trials, Asch found that 3/4th of the participants conformed to the clearly incorrect answer. Following 'herd mentality' could be less about 'losing consciousnesses' than about the costs of group defiance.

A majority of social psychologists refrain from placing individual accountability on members of a crowd. This is despite their curiosity of the individual mind. Statements like, "in the crowd, mostly critical faculties are in abeyance" are plenty. The impression is that mobs are the outcome of some mythically cursed pixie dust that spreads uncontrollably- much like a contagion. There is a critical

SOLOMON ASCH

Image Source: https://moderntherapy.online/blog-2/asch-conformity-experiment-explained

issue with this conceptualization. Apart from removing responsibility, it also fails to take social, cultural, and political context into consideration. It appears to divorce cause from effect. By this logic, most occurrences of mob violence are a result of immediate factors and not generational oppression, discrimination, or authoritarianism. Thomas Blom Hansen (2008) uses the word 'political theology' to understand mob violence in contemporary India. He says that in Indian politics, acts of violence are understood as signs of something else. It is a collective force of outrage with no recognizable actors and hence, mythical. Protests and crowds coming together have a historical significance. Acts of terror are committed by 'faceless' mobs-similar to LeBon's ideas of crowd mentality amounting to action that is devoid of individual rationality. This runs parallel to Carl Schmitt's highly debatable idea of 'miracles' in political life. He takes a neo-Hobbesian interpretation of the state as being rested on violence. The state has the capacity to decide the norm-political, legal, and sometimes even social. This is the miracle of political life. The state is omnipresent as a 'deus ex machina' or an entity that is surrounded by magical properties because of its absolute control in authorizing definitions of normal and deciding when to suspend the law for exceptions.

Crowds in India have a colonial past. Gyan Pandey (1990) writes that crowd was a faceless, aggressive, and irrational pact of people influenced by religious passion for colonial sociology. It was explained with religious fanaticism, instigation by crime (the stereotypical badmaash) or political agenda. Therefore, the colonial state insisted that they come down firmly on any form of protest (Chanavarkar, 1998). Despite its historical prominence, or perhaps because of it, the discourse of crowds symbolizing 'wild power' still prevails in the legal system. There is seldom an attempt at understanding it, and therefore, brute force remains the band-aid trying to heal infected bullet wounds. Popular media, political agents, and the larger population, continue to reinforce the notion that men in khaki are the only brown line separating 'us' from 'them.' This is interesting because if one were to take an aerial snapshot of this imagery, generational trauma, divisive politics, and oppression would prove that the brown line, in fact, is selectively permeable.

There exist many paradoxes in the mob violence of historical (and contemporary) India. Riots and marches are organized by 'political people,' who are perceived as trouble-makers, disrupting peace and harmony. But there is also advocacy of the same actions. Anger and outrage is selectively understood, appraised, and shared. Sometimes, they also become legitimate

forms of political expression, despite widespread destruction to property. However, loss of human life is understandably and in most cases, considered a critical threshold. Sometimes, reckless firing by police officers at protestors ends in loss of ts at 19. In category C, the north-eastern states (except Assam in Category B with 3 cases) have 0 reported incidents. Thus, cow related violence is far more prevalent in states with strict cow slaughter laws. Vigilantes believe that by indulging in acts of cow related violence, they are upholding the law and providing "justice without trial." This is a common y aged 12 years. They had been travelling to a cattle market in Chatra district with eight buffaloes that they intended to sell. They were lynched in Balumath forest by vigilantes who murdered and robbed them. On 28 September 2015, Mohammad Akhlaq of Bisara village near Dadri in Uttar Pradesh was brutally lynched and his 22-year-old son was severely injured by an angry mob that believed he had slaughtered a cow and was in possession of beef. Though his family tried to argue that the meat was in fact mutton, the mob did not listen. As stated earlier, Uttar Pradesh has laws against cow slaughter. But condemnation of lynching is unrelated to whether the meat was actually beef or not. Despite the official condemnation of the crime, many people including politicians supported the perpetrators. Some residents protested their arrest. Later, a petition was filed in court against Mohammed Akhlaq for alleged cow slaughter but it was proven through a government enquiry that he was not storing beef for consumption.

There is a parallel and crucial rise of cultural hegemony along with mob violence. The term "Hindutva" captures the essence of the modern form of Hindu nationalism. Hindutva, as propagated by ring wing Hindu organisations such as Rashtriya Swayamsevak Sangh, the Vishwa Hindu Parishad etc, is a form of religious or cultural nationalism. They see Hindus as victims of unfair treatment, arguing that minorities in India are given a special and allegedly unjustified status. Proponents of the ideology hold that religions that are not of the 'Indian origin' pose a threat to Hindu identity. "Cow vigilantism" in this context, refers to the extrajudicial acts of violence in the name of gau raksha, a phenomenon that has gathered momentum in recent times. A triggering factor is the underlying prevalence of Islamic terrorism around the world and terrorist attacks committed in India such as the 2008 Mumbai terror attacks, the 2016 Pathankot and Uri attacks by militants sent from and supported by Pakistan. There is a climate of conflict, fear, and resentment that has led to a rise in anti-Muslim sentiments among some sections of the population.

Additionally, social media and the quick, effortless exchange of information (often unverified) does not help. As of 2021, India has more WhatsApp users than any other country with around 390 million monthly active users. It is followed by Brazil at 99 million users, only a quarter of India's number. India also has the highest Facebook users in the world at 340 million, a huge lead over USA's 200 million users. A majority of lynching incidents are photographed, filmed and forwarded to millions of people within a span of a few hours. Many lynchings have resulted from messages accusing alleged individuals of being anti-social elements, child-lifters, cow slaughterers, or kidnappers. Even though there are independent fact-checkers, information spreads too rapidly for any corrective measures. People within the age group of 15-20 and those above 50 are most susceptible to 'fake news' while newer internet users are more likely to believe fake news. In 2018, two youngsters from Assam, Abhijit Nath and Nilotpal Das were brutally lynched by a mob in Karbi Anglong. Fake news had spread via WhatsApp that the two were child-lifters. Videos from the gruesome incident were shared across social media platforms gaining quick traction.

Ishan Gupta (2019) analyses mob lynchings in India in comparison to lynchings in the US post the Civil War in the late 1800s to 1950s. Even though the two cannot be compared chronologically, or causally, he compares their intent and ideology. Firstly, the primary objective of lynchings in the US was to assert dominance and "intimidate the blacks through racial terrorism." In the Indian scenario, the objective is to "send out a warning and set an example." The motive of the mob behind these crimes is similar in that while both inflicted only individual physical harm, the underlying intention was to intimidate an entire community. Secondly, the manner in which the victims were hanged to be easily photographed in the US and images of crimes being circulated on social media platforms in India has a similar objective. Lastly, the use of lynching as an instrument to influence elections in the US was ideologically similar to the way Indian politicians on all sides draw political advantage and manipulate voters by invoking religious and often hateful sentiments. As stated earlier, mob lynching crimes in the US occurred from late 1800s to 1950s. Over 200 anti-lynching bills were introduced in the US Congress since then. For over a century, Washington tried to declare lynching a federal hate crime but was unsuccessful. An anti-lynching bill declaring lynching a federal hate crime was passed by the Senate in 2018- three years ago, over a century after Black Americans lost their lives

to heinous, brutal mob violence. In 2020, it was passed by the US House of Representatives. As of 2021, India does not have a specific law dealing with the crime of lynching.

So far, we have explored the systems and cultural landscapes that turn crowds violent. But the question remains, why do they become violent? LeBon, the earliest exponent of crowd behaviour was quite mystified by the phenomenon. He compared it to being hypnotized- 'he is no longer conscious of his acts.' He believed that certain cognitive and discretionary faculties are momentarily destroyed. He suggested that there was a return to a primitive state of existence which is barbaric and highly unpredictable. He developed the idea of 'group mind.' Group mind makes people feel, think, and act in a manner quite different from how each member of the crowd would act in isolation. It is a 'mind of its own,' and not simply a sum of all primitive consciousnesses. McDougall's idea of crowd is quite similar to LeBon's. Both emphasize on emotional intensity and loss of rational thought. The issue I find with their conceptualizations is that they're both incomplete. They highlight the instability of the crowd, and the uncertainty of their behaviour. But cultural components of time, leadership, and politics influence two factors: 'who' is the crowd, and 'what' is their motive? And either theory does not answer those questions entirely. However, LeBon suggested that anonymity could influence how the mob behaves because it removes personal responsibility. Anonymity is relevant in explaining crowd psychology even today. For instance, anonymity is associated with higher instances of social media bullying.

Freud believed that what held any group together was a 'love relationship,' i.e., emotional ties. Taking inspiration from this basic idea, E.D. Martin interpreted crowd behaviour as the release of repressed drives. Through a crowd, the restraints of a superego (the moral mind) are relaxed and primitive ego-impulses come into play. Even though Freud said that ego followed the 'reality principle,' and acted as a balance between id and superego, Martin uses ego impulses to signify primitive urges manifested in reality. The censor within the individual is set aside in the crowd or basic id impulses come to the surface. Like most influential (and controversial) theories in psychoanalytic thought, this too cannot be tested with conventional scientific methods. And there lies the limitation of this theory. F.H Allport, often called the 'father of experimental social psychology' offers a different explanation. He suggests that crowds operate through social facilitation. A common stimulus prepares two individuals for the same response and when they are so prepared, the sight of one making that response releases and heightens that response in the other. Lastly, Turner has developed what is called an emergent norm perspective. He suggests that even in the most violent crowds, there is social interaction. Here, a situation is defined, norms for sanctioning behaviour emerge, and lines of action are justified and agreed upon. His theory is the most contemporary and currently, most complete theory of crowd psychology. There are multiple factors that influence a crowd- anonymity, stimulation, emotionality, suggestibility, initiation, contagion, lack of volition, force of unconscious impulses etc.

With reference to the complexity of group behaviour, I earlier cited Asch's study of group conformity. The costs of group deviance are sometimes higher than the costs of being incorrect. A related phenomenon is communal reinforcement. Regardless of the degree of social interaction different people desire, social processes and networks invariably influence our lives. The implications of Asch's study are not limited to group deviance, but also our ability to depend on groups for information. Common sense would dictate that we depended on groups only for ambiguous situations. For instance, you are in a new country and do not know the traffic rules. You are having a difficult time understanding traffic signals. So, you follow the crowd. You have inadequate information to find a solution and therefore, you rely on what 'everyone else is doing.' In this particular instance, your judgement is reasonable and probably even right. However, communal reinforcement leaves more room for error and bias. It is a social phenomena in which a concept or idea is repeatedly asserted in a community, regardless of whether sufficient empirical evidence has been there to support it. Over time, this concept is reinforced to become a strong belief in many people's minds. The concept seems like a fact because 'millions of people can't all be wrong.' So, when a mob is misinformed but violently raging to act, whether their belief is grounded in rationality or reality is immaterial.

One underexplored dimension of crowd psychology is style of leadership. More often than not, political leaders in India display paternalistic leadership style. Paternalistic leadership has been studied in the context of workplace management. And therefore, it is understandable that it stands out as a uniquely personal style of operating. However, to quote

Carol Hanisch, the personal is political (and the other way round). Therefore, it is not uncommon to find paternalistic leadership styles among political figures. Indians do not separate the personal from the political, and engage emotionally with leaders. And considering how male-dominated politics remains in 2021, it is not surprising that Indira Gandhi was called 'the only man in her cabinet' and Mahatma Gandhi is the 'father of the nation.' Paternalistic leadership creates a family atmosphere with messages and slogans. For instance, politicians at rallies address the crowd as 'bhaiyo aur behenon' (brothers and sisters), and use words like 'ek jutt' (united), maintain personal relationships and seek loyalty in exchange for authority. The Prime Minister of India in his speech to the nation on 19th March 2020 announced a Janata (people's) curfew from 7 am until 9 pm foreshadowing a nationwide lockdown for CoViD-19. He stated, "aapse jab bhi maine jo bhi manga hain, apne…deshwasiyon ne mujhe kabhi bhi niraash nahi kiya hain" (whenever I have asked for anything from you, you have never disappointed me). He followed this by asking for a 'few more months of patience' in the pandemic.

There is nothing inherently wrong with this leadership style. In fact, a large portion of the population prefers a paternalistic, personal approach of leadership considering the blend of individualistic and collectivistic culture in India. However, management studies have revealed that factors like expecting loyalty in exchange for nurture at work relates positively with the experience of bullying. Bullying in this context is defined as the social phenomena of being cornered, humiliated, or ridiculed and is ingrained in the organizational culture. So, lesser people are likely to find it problematic (Soylu, 2011). In India, matters of religion, community, political beliefs, caste, and culture are charged with passion. And legislation runs parallel with politically motivated influencers who have their agenda. Therefore, in a context like ours it is not only intriguing but essential to understand the importance of cultural messages and manifestoes of leaders.

The question now arises, what can law enforcement do about this? For starters, intervene before the crowd is at its most violent phase. Deploy individuals, teams, and officials to the outermost region of a crowd that is suspected to be growing in number or temperament. Monitor the crowd's activity, but there is no need to be aggressive with the crowd unless imperative. This only aggravates them further, and worsens the situation. In fact, the Constitution of India guarantees a fundamental right to freedom of speech and expression. And all citizens have the right to assemble peacefully without arms (Article 19 [1][b]). Often, crowds that have assembled for the purpose of being heard are open to negotiation. Officials are advised to show interest in their grievances. Communicate with interest with their leaders, ask them about their needs, and gauge the sentiment of the crowd. A limited, half-baked interaction risks alienation and does not allow a healthy transaction between either party. Other collaborative alternatives include attempts at diverting the crowd through sincere communication, explaining why entries to certain areas are restricted and striking a chord with the leadership.

When matters may seem to take a turn for the worse, law enforcement can take stricter action. The first option is proclamation of dispersal orders. A proclamation establishes the illegal nature of the crowd's actions, and is an excellent medium to make known to a crowd the intentions of the control force. The intent of a dispersal order is to permanently disperse a crowd, not to merely relocate the problem. It should be made clear that the crowd is expected to immediately leave the area, and include a warning that force may be used which may inflict significant pain or result in serious injury. The dispersal order must be given in a manner reasonably believed to be heard and understood by the intended audience. Based upon the circumstances, law enforcement may need to consider multiple announcements from various locations. Dispersal orders may be delivered in languages that are appropriate for the audience. Show of force, though temporary in conflict resolution, sometimes becomes an immediate and effective solution. Marching a well-equipped and highly disciplined control force into view of an assembled crowd maybe all that is needed to persuade dissidents to disperse and retire peaceably from the scene. In other situations, however, a show of force may have a counterproductive effect. It may cause more persons to be attracted to the "show" and provoke a nonviolent crowd into a violent confrontation.

Lastly, more severe interventions include apprehension of crowd members, use of barriers and employment of water. The apprehension of an individual can only be justified if that person is in violation of the law. Situations may arise in a crowd control mission where large numbers of persons are participating in unlawful activities. The dispersal of such groups might result in greater violence or militant acts. Factors may exist that preclude the use of water or riot control agents, thus necessitating the containment

of the crowd in a given area or the apprehension and removal of those crowd members committing unlawful acts. Wherever possible, military forces should allow civil police officers to perform the actual apprehension, processing, and detention of civilian law violators. The most successful law enforcement strategy for dealing with mass arrests and bookings is proper planning, training, and comprehensive briefing of involved peace officers prior to the event. To reiterate, these methods must only be employed when other collaborative, pre-emptive interventions are unsuccessful.

But focusing on the larger picture indicates long-term policy changes. Following a lynching incident in Tripura due to online rumours about child-lifters, the state government banned internet and SMS services in the region for 48 hours. Solutions like these are only temporarily effective. But the government can take inspiration from Kerala where 150 government schools have started teaching students how to spot fake news and separate unreliable sources from reliable ones. While numerous campaigns by governments, private and non-profit organizations aim at raising awareness about misinformation, there is a 'human factor' that may act as a barrier. People find it difficult to accept contradicting information when they are hold strong convictions about something, and they are more likely to accept what they already believe. This is known as confirmation bias (Westerwick et al., 2017). For instance, 'conservative' Americans do not accept the validity of the information of "liberal" non government organizations that expose fake news. In India, the central government's Pradhan Mantri Digital Saksharta Abhiyan aims to make rural households digitally literate. It can be extended to teach people how to recognize false information.

The Indian Penal Code of 1860 does not have a provision for mob lynching and does not specifically recognize "lynching" as a criminal offence. Therefore, the perpetrators of fatal lynchings are tried for murder. For instance, the first information report in 2015 Dadri lynching cast contained charges under the following sections of the IPC:

- 147-Rioting
- 148- Rioting, armed with a deadly weapon
- 149- Unlawful assembly
- 302- Murder
- 307- Attempt to murder
- 458- Housebreaking
- 504- Intentional insult with intent to provoke breach of peace

Section 223 of the Code of Criminal Procedure of 1973 allows perpetrators of mobs to be tried collectively. Section 505 (statements conducing to public mischief) and 153 A (fostering enmity) of the IPC are usually applicable in cases of lynching. And therefore, need for an anti-lynching act is evident. In late 2018, the Manipur state assembly unanimously passed an anti-lynching bill to enact a law. The law closely follows the Supreme Court guidelines issued in the Tehseen Poonawalla case and aims to define the duties and responsibilities of the state government and police authorities in cases of lynching. However, the nature of the lynchings in Manipure is different in terms of causes and motives as compared to those discussed in this article.

At the beginning of this article, I posed a question to you- my patient reader. I asked, "Who plays the orchestra?" As would be clear by now, I was really just asking, "Who orchestrates the psychology of mob violence?" As a 16-year-old student reading K.K Ghai's books for Political Science and Ramchandra Guha's India after Gandhi, I believed that I had a single correct answer. Then the world changed rapidly. In 2017, as a-19-year old I watched in horror as a mob of Akhil Bharatiya Vidyarthi Parishad (ABVP) and Delhi University Students' Union (DUSU) members entered Ramjas College in the north campus of Delhi University to protest against a scheduled talk by JNU student Umar Khalid. Khalid was arrested on sedition charges in 2016. Then in 2019, as a 21-year-old, I watched Ramchandra Guha being interrupted mid-interview and detailed by Delhi police during CAA protests. The more I read and experienced, the more pessimistic I became, and the more confused I became of the answer to that question. To my surprise, I found that there is no one 'leader' or even personality type I can mentally execute as the villain of all socio-political evil. I now believe that there are three elements in a mob- each individual member, the totality of its members, and lastly, the web of contexts that put it there. Much like among a group of musicians, in a mob, each member adds their identity, history, and beliefs into the mix. And together, they display a largely indistinguishable form of rage. But it is systemic and generational partition based on religion, caste, gender, culture and the power to influence that makes the crowd a mob, because at the end of the day, the conductor plays the orchestra and the musicians play music.

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ROHAN NANDY
ISC BATCH OF 2016

The Conundrum of Free Speech in India

[A historical perspective of free speech in India during the British period and its evolution is the subject matter of investigation by Rohan Nandy]

Article 19 of the Indian Constitution provides every citizen with the fundamental right to freedom of speech and expression and the boundary within which that operates. At the same time, there is Indian legislation, namely section 153A and 295A of the Indian Penal Code, 1860 (hereinafter IPC) which delineates hate speech. Through this paper, I shall first explain the inception of these two sections on hate speech and the purpose they serve. Further, we shall see how the constitutionality of these were upheld in post-independence India. Next, we will look at the way the Supreme Court has observed the idea and elements necessary for the enjoyment of free speech and lastly, whether the abovementioned hate speech laws are relevant in today's India or not and whether its presence is a conundrum.

How, when, and why?

The British administration in India followed suit of the previous Hindu and Muslim rulers when formulating laws in India. They kept the religious scriptures at the centre for making laws for the Hindus and Muslims and followed a method of an unqualified tolerance toward their religious practices even if they did not accept those practices in their own religion for the sake of 'political and economic expediency'. This led to the British administration trying to protect even the slightest instance religious insult to any class of the then His Majesty's subjects and this led to the insertion of section 153A in 1898. One of the prominent cases that led to the adding of hate speech in the IPC i.e. section 153A, is when a prominent member of the Arya Samaj, Lekh Ram was murdered in Lahore in 1897. Five years earlier he had authored a pamphlet criticizing Islam and this was due to that. There were incidents of communal killing in Peshawar, Sinnar and Poona as well but what is interesting to note is that these incidents arguably had nothing to do with hate speech. In fact, even when the legislation was proposed before the Viceroy's Council, members had reservations against its implementation because it seemed to be an impediment to those who were trying to reform certain aspects of religion. This is because the proposed section regarding hate speech made it a crime to 'promote feelings of enmity or hatred between different classes of Her Majesty's subjects'. In a way of speaking, literary work or even news reporting would have to be done as if walking of egg shells! But with all the restrictions that 153A imposed, it was the response of the public to the cases that were decided in regard to it that the legislators of British India felt the need to increase the level of protection. One might even say they felt a need to increase tolerance towards the religious sentiments of the masses which led to the creation of section 295A. However, let us first look at a few cases where section 153A was involved.

The tensions between the Hindus and Muslims grew to a stage where the communities started feeling an inadequacy in the law.

This was first observed in the P.K Chakravarty v. The King Emperor . Here, a newspaper in Calcutta called 'Forward' had printed the translation of a pamphlet in English from Urdu. The contents of the pamphlet were trying to incite Muslims against the members of other communities. The judgement of the Division Bench in the case was authored by Rankin J., and he said that the newspaper had given its reader a "perfectly legitimate and sensible piece of news" in an "ordinary way". This case was further upheld in the Hemendra Prasad Ghose And Anr. vs King-Emperor . The Courts in Calcutta had formed a test to investigate the merits of the case and not merely bind any act within the folds of section 153A because it said something unfavourable about a certain community or might tend to incite certain behaviour from some momentarily impassioned members of society. The publication must have the intent to bring a particular class of people against another. However, Calcutta was very different from Punjab which had become a hotbed for Hindu-Muslim rivalry in the 1920's.

In 1927 in Lahore, Mahashe Rajpal published the infamous Rangila Rasul pamphlet. The English translation of the title of the pamphlet is "colourful Prophet", however the matter would get lost in translation if simply referred to by its direct translation. The word Rangila would mean somebody of not a dignified character and has sexual undertones attached to it. Naturally, the matter created great uproar within the Punjab and the matter was heard before the District Magistrate where Rajpal argued that there was no intention of promoting any kind of enmity between different classes of people. He believed that the contents of the pamphlet were necessary for the discussion in society and that all of it based on facts. Gandhi in Young India had written about the pamphlet and questioned "what the motive possibly could be in writing or printing such a book except to inflame passions." . Rajpal said it was because of the article that Gandhi wrote that the publication had become such an issue. The District Court convicted him under 153A and so did the Sessions Judge. However, the non-Muslim judge of the Punjab High Court, Dalip Singh, J. acquitted Rajpal on the finding that the satire, which was in bad taste, was not in any way an insult to the Muslim religion and also it did not try to incite members of any other class to become hateful toward the Muslims. The reason that he gave for passing this judgment was that questioning the character of the Prophet would be beyond the scope of section 153A because it would then bring a 'serious historian's' work also under the scrutiny of this section which could lead to adverse consequences. While, Dalip Singh J. acquitted Rajpal he had made a recommendation to amend the legislation to accommodate for the protection of religious feelings of any person. This would eventually be the fate of the IPC in the coming months of 1927 but we need analyse the community sentiment and upheaval in the public order first.

The Muslims of Punjab did not take the judgement lightly or favourably, in fact the public had been enraged to the point that there were calls for Dalip Singh's resignation from the bench. The Muslim Outlook in particular was one of the publications with the strongest criticism of the judgement and its editor, D.S. Bukhary was prosecuted by the government for being in contempt. He went on to explain to the Court the importance of the Prophet in the Islam along the lines that an insult to the Prophet was as sacrosanct as an insult to the religion itself. However, he was eventually convicted because his contempt arose not out claiming the judgement was wrong but because he propagated that it was found on extrajudicial grounds. The tension between the Punjabi Hindus and Muslims had reached a boiling point after this but as Sir Mohammad Shafi put it, it was the article in Risala-i-Vartman, an Urdu journal in Lahore, called 'Sair-i-Dozakh' that "had thrown a lighted match in a powder magazine" . The communal tension surrounding this case along with the residue of the Rangila Rasul judgement, led the Lahore High Court to convict the author of the controversial article this time. It is interesting to note that the merits of the case were not very different from the judgement passed just a few months ago. The reasoning given by the court was quite like what Bukhary had to say in his trial. It was found that it was indeed not very easy to distinguish between the founder of the religion and the religion itself when looking at the elements that lead to an offence under section 153A of the IPC. Had public opinion and the fear of facing the scrutiny that Dalip Singh, J. had to face been the actual deciding factor in this judgement? Regardless, the Vartman judgement had left the interpretation of section 153A more ambiguous than it was to begin with.

At this point, the legislative assembly felt that the IPC lacked in certain aspects in terms of protecting the religious sentiments of His Majesty's subjects in British India. Considering this, the section 295A was added which made it a punishable offence to 'insult the religion or religious beliefs' or 'outrage

religious feelings' with 'deliberate and malicious intention'. Neeti Nair has produced a thoroughbred scholarship in understanding the development of this section and has used the term 'legislative pragmatism' to define the way in which this section was made law. I understand this to be 'legislative compromise', this is because the Indian legislators of the time preferred their representative position over a better understanding of the freedom of expression. The issues about the freedom of expression had come up many times in the Select Committee debates and there were three main minutes of dissent. The only dissent that was allowed to pass was the one made by M.A. Jinnah which made the offence under 295A non-bailable. The dissent that was not allowed was firstly, the overall rejection of the amendment by various members who believed that the laws of the time were adequate to deal with the issues of religion and that this amendment would be a 'regrettable concession to intolerance'. The other one was by N.C. Kelkar who suggested that there should be a clear exclusion of those persons who were genuinely criticizing religion for literary purposes or social reform. Notably, of all the dissenter, it was Pandit Nilkantha Das, in my opinion, who had a premonition when he thought that the bill would 'mostly imprison cultured men' and 'free thinkers'. Going by the first minute of dissent that was rejected it feels as though a need for over toleration in the given communal climate of the time gave way to a culture of intolerance.

Having understood the development and background to this section we shall now look at how it was interpreted qua its constitutionality in free India.

295A, Public Order and Freedom of Speech in Post-independence India

The year is 1950 and Republic of India now has a constitution with Part III of this 'longest constitution in the world' being solely dedicated to the fundamental rights of its citizens. From these various fundamental rights, Article 19(1)(a) gives a citizen the right to the freedom of speech and expression. Article 19(2) provides that there can be reasonable restrictions over a citizen's rights in Article 19(1)(a), the question that now arises is whether section 295A of the IPC is ultra vires this Article or not.

This was precisely the bone of contention in Ramji Lal Modi vs The State of U. P . The petitioner in this case was the editor, publisher, and printer of a cow protection magazine in Kanpur called "Gaurakshak". He was prosecuted by the state for publishing an article that outraged the religious feelings of Muslims. He was convicted under section 295A and took the matter up to the Supreme Court, arguing that the scope of section 295A is wider than the restrictions that were in clause 2 of Article 19. The reason for saying this is -"A law interfering with the freedom of speech and expression and imposing a punishment for its breach may, says counsel, be "in the interests of public order" only if the likelihood of public disorder is made an ingredient of the offence and the prevention of public disorder is a matter of proximate and not remote consideration."

It was also argued that an insult to religious beliefs may cause public disorder but that is not always the case and the section fails mark a distinction between the cases where outraging religious beliefs falls with the ambit of 19(2) causing public disorder and the cases where such disorder is not caused. Considering this, the petitioner prayed to hold section 295A constitutionally void. In support of this argument the petitioner relied on Romesh Thapar v. State of Madras . In this case a newspaper of the petitioner was banned from circulation for the securing of 'public safety' and maintenance of 'public order' under section 9(1-A) of the Madras Maintenance of Public Order Act, 1949. Article 19(2) of the constitution at the time did not have the words 'public order' attached to it and it was only a protection against acts undermining of the security of state or acts that tended to overthrow the state. The Court found that the ambit of the Madras Act was much wider than the constitutional provisions and the section was rendered void. Brij Bhushan v. State of Delhi also dealt with a similar section which dealt with public order and public safety and the court applied the principles laid down in Romesh Thapar and the section was pronounced as void. It was only after these cases that the legislature felt the need to add the words 'public order' in Article 19(2) through the first amendment to the Constitution of India. Even though these words were added, the principle that the petitioners wanted to use was that if a wider interpretation and narrower one was not severable from the section then it could not be constitutionally upheld. In the Romesh Thapar case, it was accepted that some instances of disruption of public order may cause a threat to the security of state but that could not always be the case. Similarly, outraging religious feelings could create public disorder but not always. However, the court gave a very wide interpretation to the words "in the interest of" and said that it was different from the phrase "for the maintenance of", giving it larger area

"The interpretation of Ramji Lal Modi may be very wide, in fact dangerously wide but the courts have been constantly undermining its interpretation in terms of 'public order' since the proximity test was laid down in Lohia I. "

of scrutiny. According to the court since the words "in the interest of…. public order" have been inserted in Article 19(2) anything that even has the potential/tendency of causing public disorder would fall within the reasonable restriction. Eventually, the court found that section 295A was well within the realms of constitutionality due to this wide meaning of "interest of".

Interestingly, only three years later the Supreme Court decided in Superintendent, Central Prison, Fatehgarh v Ram Manohar Lohia, (Lohia I) that there is proximity test to be applied each time deciding for 'public order'. It was held in the case that there must be a proximate link between what a person says and the disruption of public order. In this case the petitioner was making speeches where he was trying to tell farmers to not pay certain taxes. However, the Court found that "Unless there is a proximate connection between the instigation and the public order, the restriction, in our view, is neither reasonable nor is it in the interest of public order." Keeping this in mind it seems contradictory that the Supreme Court maintains 295A as constitutional because under this section we see that whether an insult to a religion causes public disorder or not, is a punishable crime. The interpretation is so wide that the question of a proximate link does not even arise, merely saying anything that could insult a religion is enough. The question then arises, who gets to say whether a particular statement is an insult to a religion or not? Can only a 'insider' of the religion speak on its behalf or can the academic also have a point of view? Things would get even more complicated with a religion like Hinduism which is most prevalent in India and at the same time is not monotheistic. There are innumerable Gods in this religion, then to what extent is public order disturbed for a specific God? More importantly, does a particular statement really tend to create public disorder or will the invocation of 295A then just be a by product of a practice of religious intolerance?

By giving into a mere mention of something causing religious hurt the court may end up conceding to the heckler's veto . In State of U.P. v. Lalai Singh Yadav , Justice Krishna Iyer pointed out the difference between a reasonable heckler whose genuine complaint must duly be taken into consideration and the "few fanatics [who] hold obdurate views" The Supreme Court, however, has not been very consistent with Justice Krishna Iyer's interpretations in Lalai Singh Yadav as in Baragur Ramachandrappa v. State of Karnataka it took a more conservative approach. The court held that "what may be a laughable allegation to a progressive people could appear as sheer heresy to a conservative and sensitive one" . On the face of the matter, it seems to

be diametrically opposed to the principle laid down in Lalai Singh Yadav even though the judge strength in the former case was higher. Section 295A gives room for a nuanced interpretation for looking at different facts due to the overarching support it gets from the judgement delivered by the constitutional bench in Ramji Lal Modi. There seems to be a dilemma in terms of who has the right to be offended, rather, the dilemma lies in answering how we gauge the level of offence. In the landmark judgment of Navtej Singh Johar v. Union of India , the question of morality arose while discussing the erstwhile 377 of the IPC which was rendered unconstitutional. It was found in this case that morality in its legal understanding did not lie in the conventional morality of a society but lay in the constitutional morality of a country. If we apply the same test to the all the cases regarding section 295A, the results could be very different. The ideal of liberty is enshrined in Article 21 of the Indian Constitution is essential for the existence of a democracy and so is fraternity. However, every criticism of religion cannot be rendered as an attack on fraternity. In Ram Manohar Lohia v. State of Bihar (Lohia-II), the court did not deal with 295A but dealt with the conception of public order wherein it said, "One has to imagine three concentric circles. Law and order represent the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State." If we consider this in the interpretation of 295A then we again see that just because something brings disturbance to law and order it does not necessarily mean that there is disturbance of public order as well. The whole claim of the approval of section 295A constitutionally, hinges on public order and if the section does not adequately deal with that, can it really be held constitutionally valid with the development that we have seen in the interpretation of public order in India?

In the practical use of section 295A, we must read it with section 95 and 96 of the Criminal Procedure Code, 1973. According to these sections the government of a state has the power to simply seize publications that comes under the scrutiny of section 295A. We have already seen how problematic its interpretation is. The government does not need to satisfy any checks before calling for the ban of a book because it may hurt religious sentiments, this is an area where the heckler's veto can thrive. This is exactly what happened in State of Maharashtra v. Sangharaj Damodar Rupawate . Author James Laine had written a book called Shivaji-Hindu King in Islamic India. Laine is professor of religious studies at Macalester College in Saint Paul, Minnesota, USA, therefore, by all means he is a 'serious historian/academic'. In his book, he painted a picture of Shivaji, the revered Maratha ruler, opposed to his populist image. He was shown as a power-hungry figure and it was said that possibly he was a Rajput and not a Maratha at all. This resulted in huge public uproar in Maharashtra and the library where he had gotten a lot of research materials, Bhandarkar Oriental Research Institute was vandalised by angry protestors. The Government of Maharashtra had order for the forfeiture of the book however, this order was eventually set-aside by the courts, because it was seen as a measure too drastic. More importantly, the court said that the eventual readers of the text will be relevant in foreseeing the consequences of such a publication and thus, it applied a proximity test here. In Sanjay Leela Bhansali and Ors vs State of Rajasthan and Ors. the court found that religious sentiments were not being hurt as the issue was around the portrayal of Maharani Padmavati in a film by the name of 'Padmavat'. In these two cases we see that section 295A is being invoked not by reasonable hecklers but fanatics, however, Shivaji and Maharani Padmavati are not even religious characters. Still section 295A finds a way to act as an unnecessary impediment to the freedom of speech and expression. The Supreme Court fortunately has upheld the rights of the citizens of this country but at the cost of constant harassment on the basis of a law that seems to be undermined since the first the case that upheld its constitutional validity. Shreya Singhal v. Union of India , was the landmark judgement where the Supreme Court found section 66A of the Information Technology Act, 2000 unconstitutional. Justice R. F. Nariman held that "mere advocacy of a particular cause howsoever unpopular" is well within Article 19(1)(a) and further went on to state that there is difference between advocacy and incitement. It is only when a particular instance incites people to the extent to cause public disorder that Article 19(2) can be applied.

Conclusion

The interpretation of Ramji Lal Modi may be very wide, in fact dangerously wide but the courts have been constantly undermining its interpretation in terms of 'public order' since the proximity test was laid down in Lohia I. However, these cases while dealing with the subject of public order and free speech are not directly involved with section 295A. Ramji Lal Modi was decided by a five judge bench

and in order for it to be read down, a bench constituting seven Supreme Court judges would be required to deal with the question of its constitutionality owing to the doctrine of Judicial Discipline. The basic tenet of Article 19(2) is to protect the public against speech which might cause distress en masse but as we can see 295A is being invoked again and again not to prove to the court that there is in fact public disorder that is going to be caused but to merely say that religious sentiments are hurt. My effort here is not to say that these statements which are critical of religion are not objectionable. Rather, I have tried to showcase that they do not necessarily become hate speech as 295A makes them out to be. In my interpretation of the cases that I have cited, I observe that there has been a de facto reversal of Ramji Lal Modi but section 295A still exists and is a cognizable offence. We have seen the intolerance that it breeds and most recently that was seen in the case of Kiku Sharda who was in judicial custody for 14 days due a mere complaint by members of the Dera Sacha Sauda religious sect. So long as this section stays, India's Constitution continues to reflect its communal origins and presents a conundrum where a judiciary strives to uphold the Constitution.

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ASMITA KAKATI
ISC BATCH OF 2021

Los Desaparecidos

[The mysterious disappearance of people in Latin America is investigated by Asmita Kakati]

The Mysterious Mass Disappearances in Latin- America has been a topic much discussed and altough not a current havoc amidst the corona virus pandemic ,intensive research is still being conducted by several scholars on this atrocious practice of what we may call as 'enforced or involuntary disappearances'.In the last two decades, it has been estimated that approximately 200,000 people in the region have disappeared with Colombia topping the list and although the number is alarming, there could be many more missing persons of whom not yet they have registration.

Of the 10 countries that the UN classifies with the most forced disappearances since 1980, seven are in Latin America and according to the agency, this is because groups outside the law, or the governments themselves, impose control through fear, using kidnapping or disappearance as a strategy to reduce entire communities.

Enforced disappearance only achieved a clear status in international law because of the devastating wave of political crimes that swept across Latin American during the dictatorships of the 1970s, but despite the official legal definition established in the UN Declaration on the Protection of All Persons from Enforced Disappearance in 1992, this abhorrent practice is still far from being eliminated.Enforced disappearance represents a particularly cruel and damaging crime, victimising not only the disappeared person but also the wider networks of his or her families and friends. The uncertainty around the victim's whereabouts leave relatives especially in a state of perpetual fear and suffering, caught between the need for answers and the inability to mourn.

The history of it all goes back to 1966 , when the Guatemalan CIA-fortified military regime began 'Operación Limpieza' meaning Operation Clean-up which included forcibly disappearing thirty known members of the national communist party. With it they began one of the Latin American Cold War's most notorious and vicious processes of political repression. Like an infection, this dirty war tactic spread across Latin America, employed by military and paramilitary groups and governments who intended quick, untraceable executions for their enemies.When the Cold War heated up in Latin America in the 1970's, the Argentinian military junta made some 30,000 people disappear and Chilean military dictator Augusto Pinochet's regime made over 3,000 people disappear in the span of a few years. Augusto Pinochet ,in fact suffocated the political life in Chile,banned all trade unions and made Chile his Sultanate.

Political repression was accomplished not only by vanishing a large number of left-wing heretics, but also by leaving the lives of thousands of family members shattered and

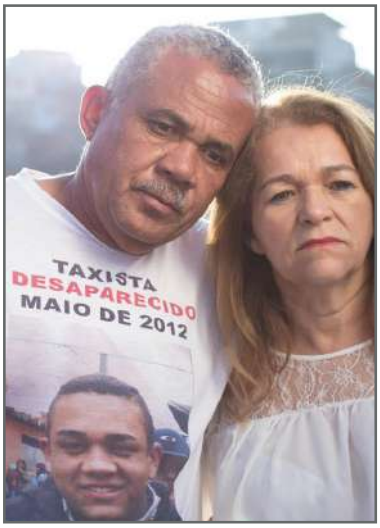

Image Source:https://www.icrc.org/en/document/missing-latin-america--families-will-not-stop-searching

irresolute. However, this inspired a counter-cultural movement, led primarily by mothers demanding their children to be returned alive, a protest that shook the foundations of the dictatorship's legitimacy, and inspired thousands to demand the same even though it resulted in several mothers disappearing too.

Whatsoever, the story of desaparecidos does not end in the 1990's with the Cold War. Countries like Colombia and Mexico have not yet moved out of the conflicts that perpetuate the culture of disappearances in their countries. The war on drugs is the modern war on communism. Between 2007 and 2009 alone, over 35,000 people had disappeared in Colombia, with over 20% of these victims being women or children under the age of fifteen. Interestingly,in the last decade, several mass graves containing over 1,500 bodies was found in Colombia however some 40,000 desaparecidos still remain a complete mystery in terms of parties accountable for the crime and status of life or death.

In Mexico for instance, the escalation of violence since 2007, when the war on drugs was escalated by the government, has been brutal. Tremenduous number of individuals have disappeared and about half of them are under the age of thirty. Males between the age of nineteen and twenty-five are categorically the most vulnerable group. Several thousand people have disappeared without even being reported because family members know better than to trust local police. Instead they form neighbourly alliances and take matters into their own hands, facing anonymous threats over the phone and routine vandalization of their possessions.

Thus we can say that socio-political change in Latin America may be a while away, however accountability is being demanded by the youth and the families of the desaparecidos .Latin America's social and political landscape in the last century has often been shaped by the absence of democracy, absence of accountability, and absence of people. The culture of desaparecidos is a memory for some and a reality for others, but they are united by the desire for change and for improvement. Now more than ever Latin America faces itself and asks for change and recognition of regimes' past mistakes. It is this fervour for accountability that drives social change, progress and cultural healing and gives hope that the answers we are looking for will rightfully be given.

AAKANGSHA DUTTA
CLASS 12 COMMERCE
ISC BATCH OF 2020

COLONISATION AND THE 'OTHER'

[Aakangsha Datta evaluates the role of colonization and its impact on the rise of Hinduism.}

The rise of Hinduism and subsequently being codified as a religion of its own, and more importantly, in isolation against the others has always found its origins in different eras according to different scholars. While not attempting to disregard any theory completely, this paper will make an attempt to trace the rise of Hinduism as a religion in opposition to the 'other' during the colonial period. The primary hypothesis of the paper is that "colonisation led to creation of Hinduism and creation of the Other". For the simpler understanding of the paper, I shall define the key terms here to limit its scope from its otherwise broader meaning. Colonisation here refers to the period of not only the British Raj, but the period of colonial influence over the country beginning with the East India Company's arrival, in other words, over the 200 years of British influence and rule over the subcontinent. Hinduism here strictly refers to the religion, and the subsequent units while being embedded on grounds of religion. While the 'Other' is usually applied in a postcolonial context, here, it refers primarily to people of religions other than Hinduism while focusing mostly on Islam. The paper will first explain why the foundation of Hinduism as a lone religion cannot be prescribed to the era preceding colonialism. It will then provide evidence for why colonialism is believed to be the root of this creation. While attempting to do that, the paper will also provide a scholarly counter argument to its own claim, how Hinduism theologically found its relevance and structure much before the arrival of colonialism, and shall make an attempt to disprove it. Finally the aim of this paper is to come to a logical conclusion to trace the rise of the religion of Hinduism as we see it today, in opposition and in isolation.

Arjun Appadurai in his book 'The Fear of Small Numbers' said that

"minorities do not come preformed" (2007, 45). This idea that the minority, the majority and groups in isolation are structurally formed due to instances and actions is precisely what the colonial rule did. The question now arises: Who is the minority? And who is the majority? These are questions that the reader needs to keep in mind as they progress through this paper. An idea of a majority and minority can only be construed after the sects or groups are particularly and non-homogeneously sculptured. Here is when we look at the religion of Hinduism, even before the boundaries of the religion were strictly drawn. "Even after the word Hindu had acquired a religious connotation, it continued to be used as a synonym for an Indian in some parts of the world" and until the twentieth century, "use of Hindu in the meaning 'Indian'" persisted (Sharma 2002, 5). This is the beginning of the answer to the first question of this paper that asks how and why colonialism was responsible for the division in religions.

To answer the query of why this paper looks solely at the colonial period, one needs to first counter and refute why periods that predate the British Raj are not considered. Arvind Sharma points out that the difference between the Hindu and the Muslim was "worth noting" such that according to "one early Muslim historian, the Arab conqueror countenanced even the privileged position of the Brahmans, not only in religious matters but also in the administrative sphere (Ikram 1964:11)" (Sharma 2002, 5), an instance that the idea of the religious minority and the 'Other' had not prefaced early on. Taking a look at Muhammad ibn Qasim's rule, one of the earliest Islamic contact with India, one can infer the truth of this idea further. Qasims's "boldest innovation was the appointment of Siskar, the former minister of his vanquished adversary Raja Dahir" while also marrying "Rani Ladi, Dahar's widow" (Sharma 2002, 6), paving the foundations for Hindu-Muslim coexistence and acknowledging that the idea of this rigid divide with the 'Other' simply did not exist in indigenous epistemologies. We move on to the "famous scholar Albiruni" who talks about the "relationship between Hinduism and Buddhism". Buddhists "cordially hated Brahmans", however, they were still "nearer akin to them than the others" (Sharma 2002, 7) . Even though "Albiruni distinguishes between the two" (Sharma 2002, 7), there still are evident overlaps which portray that there was no outright categorization of the Hindu against the 'Other'. This brings us to the realization that Hinduism essentially faced the "problem of fluid boundaries" and this description of Albiruni "clearly testifies to the internal diversity of Hinduism" (Sharma 2002, 8). This very diversity of Hinduism, its affinity to other religions, and its lack of decided boundaries in this period of the Islam Rule can be construed as factors why it was not categorically defined as a religion in clear opposition to the other religions.

As time progressed with the arrival of the Mughal empire, the questions on Hinduism as a religion, its plurality persisted. Similar to the "broad framework of multiple castes" in Hinduism that could accommodate "berrations or deviations or exceptions", similarly, the broad framework of Hinduism and multiple kingdoms embedded on its principles could "accommodate the new Muslim kingdoms" (Sharma, 2002 10). This accommodation in itself stands proof to the fact that Hinduism was not only pluralistic in nature but also accepting, negating the possibility of it being stoic or opposing to the 'other', in this case, to Islam. In fact, when Sharma talks about how "at least three Hindu generals, Sundar, Nath and Tilak" found their way to "positions of high responsibility" in Mahmud of Ghazana's army (2002, 10), it is proof of this same accepting nature of the religion, and the era. Sharma also points out that the traditions of the Hindu and Muslim, especially in these eras "were plural in nature" and even "coincided" with each other (2002, 11). Therefore, to claim that the divisions between Hinduism and Islam were crystal clear would be a misrepresentation. To impress on this claim further, one could note how in the medieval period "on numerous occasions Hindus and Muslims" were not really "distinguished as such", while "communities within them" were (Sharma 2002, 11). As Romila Thapar rightly points out, "to maintain a generalized statement that the period of the last thousand years was one of the victimization and enslavement of the Hindus by the Muslims is historically unacceptable" (2020). While this is not a claim to prove that Hindus and Muslims were one single unit, there were differences that were obvious. However, the narrative that the 'Other' was created with the advent of Islam and Islamic rulers is not entirely true. India then allowed for "permeability, malleability and fluidity which may have been subsequently lost" (Sharma 2002, 11). India allowed for co-existence, albeit with differences, but co-incidences nonetheless.

While we may have answered the first pertinent question on why eras that predate the British Raj and colonial influence were not responsible for the classical division of the Hindu-Muslim that was created and evidently so, we now go on to the second

part of this paper. This paper will now examine and prove that the colonial period is responsible for the creation of the evident divide between religions that now persist. In 1772 when the East India Company "directed its civil courts to adhere "invariably" to Koranic law with respect to Muslims and to the shastras (Hindu scriptures) with respect to Hindus", it was one of the first instances where religions were codified (Mehta 2004,112). Not only were they codified, they were also codified against one another. It was not merely limited to legal action where the British acted as catalysts to this divide. In "an intense effort to convert India, or, at least the Indian army, to Christianity", the British were met with resistance when during the Afghan war, "Indian Mutiny raised the stakes forbiddingly" and "in fairness it should be noted that the Muslims were blamed disproportionately for it" (Sharma 2002, 18). This gave rise to a "second wave of Hindu Sympathy" and along with the "rise of nationalism" gave way to "a convenient benchmark" (Sharma 2002, 18). A benchmark that began to consolidate Hinduism as a religion in isolation and Islam as another religion, one that perhaps through these actions could be perceived as the minority. Moreover, the sympathy only aided this growing divide between the two religions. The "process of codification remade the very idea of what counted as Hindu tradition" and this caused "the standardization and homogenization of social and religious practices" (Mehta 2004, 112). This very homogenisation of the otherwise pluralistic religion of Hinduism, as proven earlier in this paper, is the very root of the divide that finally arose between religions, removing the otherwise evident blurred lines.

While it may be unfair to say that the British only had counter-progressive intentions while they brought legislative and executive changes to the religion, all their actions consecutively led to the categorisation of Hinduism as a religion with defined boundaries. An instance of their progressive changes would be the legislative and the social changes that the British rule brought about. These include the "Age of Consent Act, which said that no female under 12 years old could be given in wedlock" or when "Governor-General Lord Dalhousie had banned suttee" (Mehta 2004, 113). All of them were instances that only strengthened the umbrella of Hinduism. These legislative changes met with "bitter and concerted opposition" (Mehta 2004, 113) and one can interpret that in this collective opposition of all sects within Hinduism to British changes was also a space where Hinduism as a religion found a semblance of unity. It is said that "settlers wrongly justify their claims to the land and their positions in society on the basis of a rule of law" (Mamdani 2020, 21), which in this case are the legislative changes. And it is these very changes which the British tried to bring in terms of religion on the basis of law that united the idea of a Hindu religion even further. Therefore, supporting the claim of this paper further - through its actions and rule, colonisation did indeed create the Hindu anger, the agitation and most importantly, the Hindu religion. The question that now arises is about how nationalism aided the growth of categorical religion? There were essentially two paths through which "nationalist energies could flow", one was of "territorial nationalism" and one was of "religious nationalism" (Sharma 2002, 21). "All India Muslim Leage, formed in 1906," was in line with of religious nationalism (Sharma 2002, 21). While there was

"The question now is - how did the idea of nationalism for the Indian subcontinent change to a monolithic idea after having sustained it otherwise for so many years? "

no single channelised effort for Hinduism in terms of religious nationalism, there are multiple instances during the colonial era where there was an "increasing identification of Indian nationalism with reformed Hinduism" (Sharma 2002, 20). Some of those were "culmination, as it were, of the numerous reform movements" like "the Brahmo Samaj, founded in 1828" and "the emergence of both Indian nationalism and a pan-Indian Hinduism" simultaneously in the nineteenth century (Sharma 2002, 20).

The question now is - how did the idea of nationalism for the Indian subcontinent change to a monolithic idea after having sustained it otherwise for so many years? Mahmood Mamdani in his book 'Neither Settler Nor Native' portrays how the violence and the "bloody confrontation" in the post-independence period shared "a common premise: that society must be homogenized in order to build a nation" (2020, 14). This was the impact on nationalism of the colonial era, a monolithic, homogeneous feeling to unite the nation. The idea of nationalism that the British left behind was evidently unitary in nature, that "every potential source of competing identity had to be cleansed in order to homogenize the nation" (Mamdani 2020, 14). It is in this bid to homogenise the nation and the subcontinent during the Raj that hetrogeneous identities were dismissed and in this came about two identities, of Hinduism and Islam, oversimplified, with their own attempt to homogenise the nations with their respective identity. It is in this attempt that the faults between the two religions widened and embedded the idea of the minority and majority, a catchphrase that had not seen any explicit mention yet.

The confrontation between Hinduism and Islam existed even before the colonial rule, not entirely in proximate apposition, but never in clear oppositon either. However, "colonial scholars dramatized" this very "confrontation", "in order to support the two nation theory, required by colonial policy" (Print, Thapar). The two nation theory was divisive by nature and more importantly, "it encouraged Indians into thinking about their identity as distinct, consolidated, monolithic religious identities" (Thapar). It bid adieu to the pluralistic and diverse nature of Indian religions that had seen light for so many years. Never had the idea of majority vis-a-vis the minority been propagated so strongly before. A question that may arise at this point is perhaps how the idea of the 'Other', the minority, became congruent with Islam and the majority with Hindusim? The ideas that give rise to these questions are primarily two. Firstly, the existence of Islam has predated colonial rule. Secondly, and more importantly, "the existence of the Jews and Parsis testifies to the fact that minorities are not unknown to the Hindus" (Sharma 2002, 19). In fact it did not even "pose a problem for Hindu polity" (Sharma 2002, 19). One needs to also keep in mind that an idea of a majority or a minority can only come about with a census, and the idea of a census came along with the colonial British modernity. Therefore, it can be understood that the colonial belief that was being propagated, that the simultaneous existence of Islam and Hinduism, was grounds for justifying the two-nation theory and that the idea of the 'Other' is not accurate.

This paper has answered, partly at least, the question on who the minority and the majority are. This is where Arjun Appadurai's argument, which the paper began with, finally finds significance. As Appadurai stated, "minorities do not come preformed" (2007, 45). One's existence is not an entire causation for it to be a minority. "They are produced in the specific circumstances of every nation and every nationalism" (Appadurai 2007, 45). The idea of the Islam minority and Hindu majority did not organically develop. It is a result of precisely coordinated and outlined actions of the British Raj. Pakistan, the nation that was created under colonial rule, was "born from the womb of fear and generations having spent their lives awaiting affirmation or negation of the Two-Nation Theory" (Loomba 2019, 131). The dangerous oversimplification of history and subsequently, the colonial attempt to "tidy up the diversity" of India fed the British narrative and laid the foundation for religious nationalisms or as "some people prefer to call (them)' communalisms" (Thapar 2020). The fact that the two, Hinduism and Islam, continued to diverge further under colonial rule is noteworthy. As Thapar states, "one aimed at establishing a separate Islamic state and managed to establish Pakistan; the other aimed at uniting the subcontinent under Hindu rule" (2020), and juxtaposing religion with statehood and national identity finally put the two age-old religions in complete isolation against the 'Other'. This suggests that colonial rule indeed was reason enough for the creation of Hinduism as a religion devoid of plurality and the evident 'Other'.

While scholars like Arvind Sharma, Romila Thapar, and Pratap Bhanu Mehta endorse this idea of religion and colonialism finding its link in each other, there is an evident opposition

to this belief as well. David Lorenzen in his publication 'Who Invented Hinduism' stated that his essay was going to argue against "the claim that Hinduism was invented or constructed by European colonizers, mostly British, sometime after 1800" (1999, 631). A piece of primary evidence Lorenzon provides suggests how Hinduism as a religion was "theologically and devotionally grounded in texts such as the Bhagavad-gita, the Puranas, and philosophical commentaries on the six darsanas" which were "firmly established" long before 1800s (Lorenzon 631). While there is truth to what Lorenzon claims, co-relating the evidence of Hinduism as a well defined isolated religion to merely its religious texts would be a gross misrepresentation. While Hinduism did find its grounds in the theological texts, it still lacked well defined boundaries and was characteristic of a plural nature, something we explored and have seen through this paper already. This is to not claim that Hinduism and Islam were reflective of one another, they were not, there were apparent and stark differences. However, as mentioned earlier, as Sharma points out, Hinduism before the colonial era allowed for a certain degree of fluidity that gradually disappeared later (2002, 11).

Lorenzen also attempts to show how "virtually all of the more scholarly among the European visitors and residents in India before 1800 identified Hinduism as a diverse but identifiable set of beliefs and practices clearly distinguished from Islam" (1999, 638). There is rightful evidence to Lorenzen's claim that Hinduism was distingushable from Islam with its own set of principles, however, these set of principles were not set in stone. The ambiguity around Hinduism was prevalent even then, for instance, "its unresolved relation with the Buddhists" (Sharma 2002, 5). Therefore, it can be interpreted that, Lorenzen was right in saying that Hinduism finds its roots in an era predating the British Raj, however the interpretation that Islam and Hinduism did not exist together within a framework but in conflict even before the Raj, may not be entirely true.

In conclusion, this paper essentially did three things while exploring and proving the hypothesis that "colonisation led to creation of Hinduism and creation of the Other". It first explored why it chose to not claim that eras predating colonial rule in India, from Muhammad ibn Qasim to the Mughal rule, as the time when Hinduism, as a specific religion, and Islam, as the 'Other', were created. Secondly, it went on to prove why the colonial rule of the British was responsible for this creation, of the religions in isolation and as the 'Other' through both its actions and the time itself. It also showed how this actively created the prevalence of the minority on the basis of which the cards of communalism and nationalism were placed. Finally, it showed that the emergence of Hinduism in the early ages as a way of life, a religion to some scholars, is very much true; however, so was the idea of the 'Other' absent and both the religions existed within a framework. A framework that was only disturbed with the arrival of colonialism.

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PRANAV CHANDOKE
ISC BATCH OF 2019

A MODERN OUTLOOK ON THE RIGHT TO PROTEST VIS-A-VIS The Indian Penal Code

[Pranav Chandoke examines the right to protest in the backdrop of the Indian Penal Code]

INTRODUCTION

Democracies all across the world are based on four core political rights: a free and fair political system that grants citizens the right to elect their government and when dissatisfied with them, the right to vote them out of power in a legitimately held election; the active participation of citizens in civic and political life; protection of the citizens' human rights, and; the prevalence of a rule of law. India is no different. Citizens in the country have universal adult franchise; they are allowed to participate in the functioning of the government by making their voice heard in the form of protests, petitions and the like; human rights are protected by both laws and the judiciary, and; the Constitution intends that the country be governed by a rule of law.

Before delving into the intricacies of this paper, that deals with the Indian Penal Code , it is imperative to mention the rights guaranteed to citizens by the Constitution of the country. Peaceful public protests are the hallmark of a democracy and these are as protected by the Constitution. Firstly, it guarantees to all citizens of the country the right to free speech and expression. Secondly, the right to assemble peacefully and without arms is also guaranteed. Despite this, it is important to mention that none of these rights are

absolute and are subject to "reasonable restrictions". It has also been held that while the freedoms guaranteed under Article 19(1) may appear to be absolute, in reality they are not so. Moreover, the Preamble securest to its citizens social, economic and political justice and assures that India will be a Democratic Republic.

The importance of protests in a democracy cannot be downplayed. They play a significant role in the social, political, legal, economic, civil and cultural structures of the country. Over the years, be it pre-independence or post-independence, protests have played a major role in affecting the functioning of the country. Be it the protests led by the freedom fighters against British rule in India, or the protests by Atal Bihari Vajpayee, Arun Jaitley and the like during the infamous Emergency from 1975-1977 or even the citizen-led protests against the Citizenship Amendment Act (hereinafter referred to as, "CAA"), the significance of protests cannot be overlooked. They act as a medium for citizens to display their emotions or views regarding certain policies or even the overall functioning of the government, peacefully.

Historically, protests have helped pave the way for a better and more inclusive society where the rights of viewpoints of the citizens have been taken into account. They have inspired change and help enable direct and active participation in the democratic affairs of the country. They have allowed individuals, groups or organizations to express their dissent and grievances, and even at certain instances, their support for policies of the government. Despite the obvious benefits that public protests have had over the years, governments all around the world treat them either as an inconvenience that needs to be controlled or a threat that needs to be extinguished.

With changes in technology, protests in the 21st century are definitely different from those earlier. Be it mobilising people or signing petitions, things have definitely changed. Technology has not only become an enabler for protests, it has also become a medium. This paper shall be looking at the provisions of the Indian Penal Code and various case judgements to conclude whether they have been evolving with the changing times or not.

This paper aims to answer the following research questions:

•What stance does the Indian Penal Code have on the right to protest?

•How has the right to protest evolved with changes in technology?

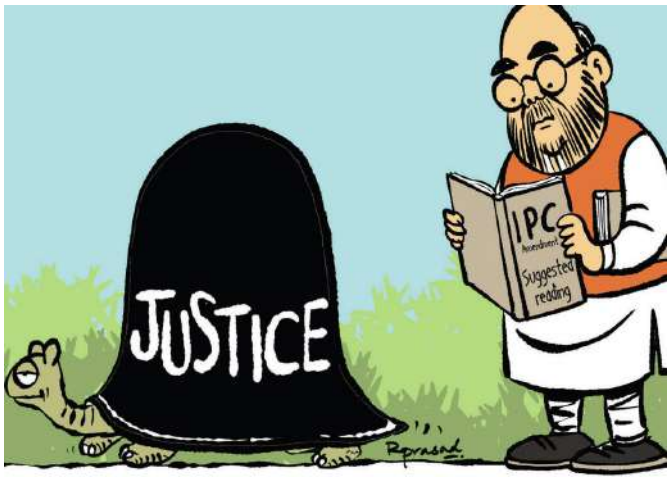
PROVISIONS IN THE IPC REGARDING PROTESTS

While there are several rights guaranteed under the Indian Constitution that may be inferred to protect the right to protest, protestors need to remember that they cannot be in violation of any of the laws of the country while staging protests. Laws in the country provide a comprehensive framework for maintaining order in public places. The Indian Penal Code is the official criminal code of the country. It is divided into 23 chapters which consist of 511 sections. The chapter that suitably addresses the theme of the current paper is Chapter VIII, that consists of sections 141-160.

Titled as "Of Offences Against the Public Tranquillity", the chapter consists of the definitions and punishments for offences that are considered to disturb or disrupt public peace and order. This Chapter consists of offences ranging from being a member of an unlawful assembly to rioting.

One of the most important sections that needs to be kept in mind while discussing the right to protest is section 141. It deals with what an unlawful assembly is. It details the several instances where a group of five people or more can be classified as an unlawful assembly. The most important ingredient of an unlawful assembly is having a common object, which is defined under section 34. Section 141 lays down several instances where an assembly may be deemed unlawful. The section also asserts that an assembly which was not unlawful earlier, may turn into an unlawful one when certain conditions are fulfilled.

Section 142 derives the offence from section 141 itself, where it deals with the instance where a person can be said to be a member of an unlawful assembly. Section 143 lays down the punishment for the member of an unlawful assembly as a term of imprisonment which may extend to 6 months, or with fine, or both. Section 144 deals with an aggravated form of the offences in the abovementioned section, where it deals with a person joining an unlawful assembly armed with a deadly weapon. It also details the punishment for the same being a term of imprisonment which may extend to two years, or with fine, or both. Section 145 deals with a person joining or continuing to be a part of an unlawful assembly that has been asked to disperse by the appropriate authority and provides the punishment for the same.



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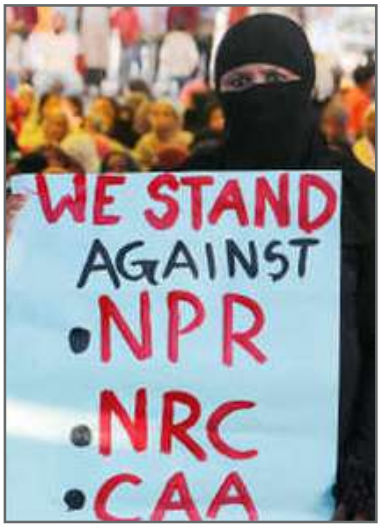
It is interesting to note that a protest of less than 5 people cannot be called an unlawful assembly, but it is generally a rarity. Therefore, it can be discerned that there are several laws in India that deal with a group of 5 or more people protesting in an unlawful assembly, be it to resist the execution of a certain law or to commit mischief, as defined under section 425.

Another group of sections that is relevant while discussing about public protests in India are the ones relating to "rioting". Section 146 relies upon section 141 while defining rioting to be the use of force or violence by an unlawful assembly. Section 147 lays down the punishment for rioting as a term of imprisonment which may extend to two years, or with fine, or both. Section 148 deals with a more aggravated form of rioting, where a person or group riots while being armed with a deadly weapon. It lays down the punishment for this offence to be an imprisonment term which may extend to three years, or with fine, or both.

Section 149 is one of the most important sections to be referred to while discussing the right to protest and the liability of protestors when one or more persons break the law. It states that "if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence". Section 150 lays down the criminal liability of a person who hires, engages, or even employs or connives to do any of those. It states that the liability of such a person would be punished as if he were a member of the unlawful assembly himself. While there are several other sections in the IPC relating to rioting and several other forms of it, sections 149 and 150 are the most important ones while discussing the right to protest in the country by civilians.

Before delving into the different forms of protest that have taken place recently and how the right to protest has evolved from those, it is imperative to discuss sections 153A and 153B of the Penal Code. They lay down the criminal liability of a person who makes promotes enmity between different groups on the basis of religion, race and the like, or makes assertions or imputations that are "prejudicial to national integration". With special reference to the protests that generally take place in the current nowadays, the essentials under this section gain even more importance. Be it protests for reservation of a certain community, or protests in favour of a legislation that segregates certain communities based on their religions, studying and analysing these sections gain even more importance in the current context. These sections serve as restriction on the freedom of speech as they are acts which could harm public peace and cause unrest. They have been justified as restrictions under public order or under 'sovereignty and integrity' . The Supreme Court, on several occasions , has related these sections to that of 'hate speeches'. While there are several other sections that govern and relate to hate speeches in India, including sections 124A, 295A, 298, 505(1) and 505(2), the most pertinent ones to be discussed with reference to the theme are the ones already explained in this paper. The entire concept of 'hate speeches' as a form of protest, whether illegal or not, will be discussed further in this research paper.

Nude and semi-nude protests have also started picking up pace in the country. While traditionally looked as a means to protest against the apathy of the government to the state of women in the country as well the crimes against them, recently they have become more prominent in the sense that people have been resorting to nude protests to draw attention to several issues other than the state of women in the country, like the controversial Citizenship (Amendment) Act, 2019. The IPC, while not specifically addressing nude protests, has several provisions governing nudity in public. The most relevant of those is section 294, that deals with "obscene" acts or words in a public place. This section lays down that any person , who to the "annoyance of others" acts or says something obscene in a public place would be held criminally liable. It lays down the punishment for the same to



SHAHEEN BAGH PROTESTS
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be a term of imprisonment which may extend to three months, or with fine, or with both. Temple art as well as the nakedness of sadhus is exempted from this section.It is noteworthy that this section, or any other section or any other law for that matter fail to define what "obscene" means. This leaves scope for the authorities to misuse this law. This shall be discussed at a later stage in this paper.

Therefore, this chapter elucidates the several provisions of the Indian Penal Code that are relevant while discussing the right to protest in India. It addresses and briefly discusses the pertinent sections that protestors need to be aware of while protesting against the various decisions or policies of the government. It briefly touches upon the entire notion of nude protests, hate speeches and even riots, all of which will be deliberated upon later in this paper.

PROMINENT FORMS OF PROTEST IN INDIA

Indians resort to protests for several reasons. Be it to protest against something the government has done, or something that it has not, protests have gradually evolved to be one of the most important tools for social change. The power of protest has

increased and governments have been actively looking to respond to protests in order to maintain their credibility. With time, protests have become an essential, if not indispensable, method of bringing about change , be it social, legal or political. Therefore, this section describes the various types of protests that are prominent in the Indian Republic in order to lay a platform to discuss the several cases that have helped pave and shape the path for the right to protest in India.

RALLIES AND DEMONSTRATIONS

A demonstration or a rally is a form of protest that involves people standing, marching or walking in a group, or in certain instances even alone, to further a certain cause. Be it candle-light vigils to show solidarity to a rape victim or full-fledged rallies, all such protests fall under rallies and demonstrations. Considering that the IPC has outlawed protests that are violent (unlawful assembly), these protest are generally non-violent in nature. The track record in India, however is very poor. The number of initially non-violent protests that turn into violent one is truly alarming. Statistics provided by The Hindu regarding the recent country-wide protests against the Citizenship (Amendment) Act prove the distressing trend of non-violent protests turning violent in the country. It reported that among the 94 districts among 14 states that took to public protests, almost 50 percent turned violent or invited police action. The report suggests that a shocking 20 out of 24 (83.33%) protesting districts in

UP experienced violence.

Be it the Shaheen Bagh protests in Delhi in 2019 or the Chipko Movement in Uttarakhand in 1973, India has been home to several rallies and demonstrations. As has been mentioned earlier, rallies and demonstrations are of several kinds. These have been discussed below.

SIT-INS

Sit-ins are protests that involve a group of people sitting at a particular area, which is usually a famous public place. Be it a park or a monument, these areas tend to have a lot of foot-fall that help the protests gain traction. This leads to these protests being picked up and reported on by the media. Reporting about a protest is absolutely essential to a protest as it helps it gain credibility. However, it has been proven that news channels portray protests in as deviant, threatening and impotent, thereby reducing their credibility. This is known as the protest paradigm. "It has also been shown that the protest paradigm is more likely to emerge if the protest involved radical tactics, if the protest's target responded to the media, and, in politically conservative newspapers, when the protest addressed political topics." In non-conservative newspapers, it is seen that the paradigm is less like to exist if the protest addressed a significant political matter.

These kind of protests are legal in nature and are protected by the Constitution and not criminalised by the IPC. However, the Supreme Court, in recent judgements , has said that the protestors cannot occupy public places indefinitely. This acts as a blow to protestors who occupied public areas until the appropriate authorities responded to their demands. However, it is also logical that the Supreme Court lay this down as it is essential that protests do not cause inconvenience to people who are not involved with them. The right to protest cannot overrule other Fundamental Rights guaranteed to the people in the country. The quote, "The right to swing my fist ends where the other man's nose begins.", by Supreme Court Justice Oliver Wendell Holmes, Jr. holds appropriate in such a situation.

RIOTS

Riots are rallies or demonstrations that become violent in nature. They have been expressly classified as criminal offences under the Indian Penal Code, 1860 under sections 146-148. There are also several sections relating to unlawful assembly. With respect to the alarming trend of peaceful rallies turning into riots in the country, the explanation given under section 141 is extremely important and relevant. It states that "an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly." This is a very important explanation upon which courts have relied several times to punish offenders who join peaceful protests and cause unrest. The fact that the assembly was lawful earlier does not mean that they avoid any liability.

While it is easy to blame protestors for being violent and flouting the law, the question that people need to ask and subsequently answer is "why?" India has had a rich history full of protests. Whether it be against the Mughals, the British or even against the ruling Government in post-Independence India, Indians have been involved in protests since generations. Riots have been a part and parcel of these. They have been defined as "the language of the unheard".

It has also been noticed that premeditation rarely plays a role in riots. They usually occur due to the inherent nature of the group, who are collectively frustrated with the happenings in the country. This view is strengthened by the fact that "individuals are unlikely to cause violence when alone, but when they are surrounded by other people who are just as angry and frustrated, they make impetuous and out-of-character decisions, especially when outside factors like opposing viewpoints and authority aggression come into play." While riots may disturb public peace and tranquillity and cause damage to life and property, they are nevertheless a means of protest and have the power to initiate societal change and begin much-needed conversations.

HATE SPEECHES

The entire concept of hate speeches has served as a blemish on the otherwise essential act of protesting. The most common instances of hate speeches being reported are during elections, where the leaders hold rallies and demonstrations in order to urge people to vote for them. While not being expressly mentioned in the IPC, the Judiciary has time and again cracked down on instances of hate speech and punished offenders. There are also several provisions in the IPC that may be interpreted to criminalise hate speech, such as sections 153B and 505. In Pravasi Bhalai Sangathan v. Union of India , the Supreme Court indicated that "… we request the Law Commission to also examine the issues raised herein thoroughly and also to consider, if it deems proper, defining the expression hate speech and make

recommendations to the Parliament to strengthen the Election Commission to curb the menace of hate speeches irrespective of wherever made". In response to this, the Law Commission of India released a report titled 'Hate Speech' in March 2017.

The report relies on the judgement of the Supreme Court in the case of Brij Bhushan v. State of Delhi where the court laid down that "public order is allied to public safety and is equivalent to security of the State". In order to determine what qualifies as 'hate speech', the report relies on a three-fold analysis – a) Is the interference prescribed by law; b) Is the interference proportionate to the legitimate aim pursued?; c) Is the interference necessary in a democratic society? In a democratic society, it is important that for protests to take place. However, protests that demean other citizens of the country on the basis of their religion, race, sex or any other such factors have been criminalised and thus, the 'right to protest' does not extend in this sense.

NUDE PROTESTS

Despite the protest paradigm that has been explained earlier, news coverage is essential to a protest. Attracting media and public attention to a protest is the root cause behind people protesting in public areas. The more the attention, the higher is the likelihood of a protest making an actual impact. Considering the taboo in India surrounding nudity, especially nudity in public, protestors have capitalised on this and often resorted to public nudity as an act of defiance to get their point across. This however is not the case always. Sometimes, the act of public nudity itself is a form of protest. Opponents of public nudity argue that it is indecent as the protests can be viewed by children, while the proponents argue that public nudity is protected by the right to freedom of speech and expression. In India, however, public nudity itself is illegal. Therefore, there arises no question of it being protected under Article 19(1)(a) of the Constitution. The most famous of these protests would be the ones in 2004 protesting against the rape of Thangjam Manorama by the 17th Assam Rifles, a blatant abuse of the power granted to them under the AFSPA .

Section 294 of the IPC deals with a person performing obscene acts or using obscene words in a public place. While 'obscene' or any of its derivatives have not been defined under any law in the country, it can be reasonably construed that a person who is naked in a public place would fall under the ambit of this section. While sadhus are an exception, normal citizens who willingly resort to nudity to protest against something are liable under this section. This means that whatever the jurisprudence regarding nude protests be all over the world, the simple existence of this section in the IPC outlaws nude protests in the country. The entire notion of the 'right to protest' gains traction here. The common debate revolves around whether the right to protest of a person exists to such a degree that it is legal for a person to be nude in a public place to protest where he/she might be seen by minors.

ONLINE PROTESTS

With the constant evolution in technology, it is only obvious that protests also add another medium to their mix. With an increase in accessibility to technology and the advent of social media, it has become easy for individuals to share their messages with hundreds, if not thousands or more people with the click of a button. This has made the internet the preferred medium for individuals or groups to organise protests, or even hold them online. Be it to raise funds, gather protestors or simply share a message, the internet has made all of this easy. This has led to a phenomenon called 'digital activism'. The introduction and subsequent growth of social networking platforms like Facebook and Twitter has only aided the cause of protestors and helped refine digital activism. They allow entire protest campaigns to run online, with little to none offline element, and still reach a very large number of people.

Be it signing petitions on platforms like change.org, writing blogs and sharing them on social media or using crowdfunding platforms to raise funds, protests in the 21st century do have a very different outlook. Gone are the days where protests started with a very small number of people which gradually grew in number. With the COVID-19 pandemic and the subsequent lockdowns, protests in the country have still continued due to the presence of online protests. This raises the question of what the IPC has in store to protect the rights of the protestors or even punish them, if necessary.

The first provision that seeks to regulate online protests is the section 499, that relates to defamation, the constitutional validity of which was upheld in Subramanian Swamy v. Union of India . Other sections are 124A (sedition), 153A, 292 (sale of obscene books), 504 (intentional insult to provoke breach of peace) and 505 (public mischief). A report of the Law Commission also suggests that a section 153C be added to prohibit incitement to hatred and a section 505A to prevent speech that causes fear, alarm

or provocation of violence.

EXISTING INDIAN JURISPRUDENCE

One of the most recent cases that has massively influenced the right to protests in India is the case of Amit Sahni v. Commissioner of Police & Ors. These are the Shaheen Bagh protests against the Citizenship (Amendment) Act, 2019. These protests refer to a peaceful, sit-in protest led by women. The protestors at Shaheen Bagh largely protested against the CAA, 2019 and even raised the issues of NRC, police brutality, unemployment, poverty and women's safety. In consonance to their non-violent protest, they blocked a road in New Delhi for 101 days from the 14th of December, 2019 to the 24th of March, 2020. Despite the Delhi Police issuing statements that they would not use force to disperse the protestors, they eventually had to step in to vacate the site following the COVID-19 pandemic. While there were petitions filed before the Courts to stop this blockade, the Supreme Court only delivered its verdict on the 7th of October, 2020. In this judgement, the Supreme Court identified the right to protest of the persons aggrieved by the legislature but laid down that the occupation of public places "indefinitely" was not permitted due to the inconvenience caused to the general public. The Hon'ble Bench also orally added that "You cannot block the public roads. There cannot be indefinite period of protest in such an area. If you want to protest, it has to be in an area identified for protest." Despite this judgement receiving its fair share of criticism, it has played a massive role in influencing not only the way that protestors should protest but also the right to protest as a whole. The case of Babulal Parate v. State of Maharashtra laid down that the right of the citizens to take out and hold public meetings derives itself from Art. 19(1)(b) of the Constitution. This means that the State cannot arbitrarily punish protestors as their right to protest peacefully is guaranteed by the Constitution.

Another case that has had a huge impact on the right to protest is Mazdoor Kisan Shakti Sangathan v. Union of India . In this, the Supreme Court held that the State must aid the right to assembly of its citizens. This establishes that the right to protest is part of the democratic machinery of a country and it must be upheld for smooth functioning. The right of the State to regulate the citizens' protests includes the right to prescribe a location for the same. The IPC is brought into focus when the third essential under section 141 is read, that details that an assembly would be deemed an unlawful assembly when it commits criminal trespass. Under the ratio decidendi from these cases, if protestors confine their protests to the area prescribed by the State and do not resort to violence, their protests would be legally protected. This was reiterated in the Amit Sahni case too.

One of the widely cited cases that has cemented the existence of the right to protest is Re Ramlila Maidan Incident v. Home Secretary, Union of India & Ors. . In this, the Supreme Court categorically stated, "Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action." This lays down that unless the protestors contravene any provision of the IPC or other relevant laws, they have a right to protest that cannot be taken away arbitrarily.

A landmark case that lays down that

"Following the Latin maxim of 'ubi jus ibi remedium', the law has accorded the public with a right in the form of a 'right to protest' and provided appropriate remedies at various instances, be it the Babulal Parate judgement or the Anuradha Bhasin judgement."

protestors cannot be attacked indiscriminately is Anita Thakur v. Government of Jammu and Kashmir . It laid down that "even though restoration of law and order is essential, force beyond what is required is not to be used. Usage of force is permitted only when it is absolutely necessary, and it must be minimal and proportional to the situation. It must be discontinued as soon as danger to life and property subsides, else it would amount to a human rights violation."

Considering how important internet protests have become, the judiciary has also ensured that the State cannot arbitrarily restrict a citizen's access to the internet. In Anuradha Bhasin v. Union of India, the Supreme Court held that the powers granted to the State cannot be used to "suppress legitimate expression of opinion". Referring to the internet ban in the state of Jammu and Kashmir (now, union territories of Jammu & Kashmir, and Ladakh), the Supreme Court held that suspending internet services indefinitely is impermissible. It stated that the power accorded to the State must be used in a bona fide and reasonable manner. This is a landmark case judgement as it helps protestors realise that while their right to protest on the internet may be curtailed temporarily keeping in mind the of the State, it cannot be curtailed arbitrarily and indefinitely.

CONCLUSION

Popularly, a democracy is a form of Government that is 'for the people, of the people and by the people'. Therefore, in a democratic republic like India, it is only natural that the citizens have certain rights that protect them from arbitrary actions by the Government. Considering the Doctrine of Separation of Powers , it is not always the case that what the Legislature does would be overruled by the Judiciary. Despite that the legislature is considered to have the interests of its people at heart , there are several times when it misunderstands these interests. In such a case, if all else fails, the citizens resort to publicly demonstrating their displeasure with the doings of the Government in the form of rallies, demonstrations, signing online petitions and the like. These, together, are called 'protests'.

Following the Latin maxim of 'ubi jus ibi remedium', the law has accorded the public with a right in the form of a 'right to protest' and provided appropriate remedies at various instances, be it the Babulal Parate judgement or the Anuradha Bhasin judgement. While not expressly mentioned in the Constitution or in any other statutes, the right to protest has been judicially recognised to be derived from Art. 19(1) of the Indian Constitution. This paper aimed to answer the questions regarding the stance of the Indian Penal Code on the right to protest as well as the changes undergone by the right to protest with changes in technology.

This paper talks about the several forms of protests that are prominent in India and whether these are legal or not. It also analyses relevant provisions in the IPC regarding protests.

After analysing the relevant provisions of the Indian Penal Code as well as several case judgements, it can be inferred that despite the IPC not expressly recognising the right to protest, it helps protect it. This is because the provisions of the IPC do not outlaw protests or disapprobation against the government. It outlaws violent protests and sedition. The difference between the legality of some forms of protest and illegality of others can be answered by taking into consideration the security of the State as well as the well-being of the citizens. As seen from the judgement of the Shaheen Bagh case, the Supreme Court outlaws protests that indefinitely occupy a public area and cause unnecessary inconvenience to the public. This shows that the right to protest is not absolute.

With the evolution of technology, the mode of protests have also changed. Despite being written and enacted in 1860, certain laws in the IPC may be interpreted to regulate these protests. Be it the law against sedition (section 124A) or the one regarding public mischief (section 505), several provisions of the IPC help better understand the right to protest.

In conclusion, it can be said that while the IPC does not "protect" the right to protest, it definitely regulates it. It lays down instances where protestors can be punished in order to ensure that public peace is not disturbed. With changing technology, a liberal interpretation of the IPC means that online protests are regulated too.

SUGGESTIONS

After thorough research, the author has some suggestions to make regarding the right to protest vis-à-vis the Indian Penal Code, 1860. They are as follows:

1.Report No. 267 of the Law Commission of India, titled 'Hate Speech', be implemented at the soonest. The report makes suggestions regarding the regulation of hate speeches in India and proposes amendments and additions in the IPC to that effect.

1.1 The report suggests adding a section after section 153B, numbered 153C, which would prohibit incitement to hatred. This section refers to hate speeches and would help better regulate rallies and demonstrations where people make speeches.
1.2 Furthermore, the report suggests that a new section be inserted after section 505, numbered 505A, that would criminalise and punish causing fear, alarm or provocation. This section would be extremely helpful in punishing culprits who intend to cease the credibility of a protest by causing unlawful violence.

2.The definition of 'obscenity' be clarified. Currently, the IPC criminalises obscene act or words in public places, but fails to define what obscene actually means. This means that this section can be arbitrarily misused by the authorities to punish protestors who are protesting about sensitive issues, such as female genitalia mutilation or crimes against women. Attaching a clear definition regarding obscenity would also help clarify India's stance on nude protests in the country.

3.With a growing trend in internet protests, it is essential that the Union Parliament and State Legislatures designate a certain number of signatures that an online petition needs in order for it to be discusses in the House. This would help provide credibility to online protests too. In order to avoid frivolous petitions, it must be deemed that to be discussed on the floor of the House, the petition must have the backing of a certain minimum number of elected members.

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