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Introduction to the Special Issue: Hindutva and the Rule(s) of Law

M. Sudhir Selvaraj
University of Bradford, United Kingdom of Great Britain and Northern Ireland

Raphael Susewind
London School of Economics and Political Sciences, United Kingdom of Great Britain and Northern Ireland

Abstract
India is increasingly described as an 'ethnic democracy', 'populist majoritarian autocracy' or 'ethnocracy': a form of rule supported by an electoral majority rooted in ethnic affiliation, with limited and eroding checks and balances that would protect minorities. Over the past decade, constitutional arrangements shifted, 'dog-whistle' laws were passed and legal institutions starved of resources. In studying these developments, we want to ground generic studies of populist/majoritarian/autocratic law by unpacking the specific Indian version of it: how does Hindutva as a political ideology and the current dispensation as political agents conceive of the rule of law, its purpose and function? Which rules do they want the law to follow? We combine papers that trace Hindutva's own ideological commitments with those tracking material changes in legislation or jurisprudence and map out their differential consequences for India's minorities, culminating in a wider reflection on the rule(s) of law under autocratic circumstances.

Keywords
Hindutva, India, violence, anti-conversion laws, structural violence

Corresponding author:
Raphael Susewind, London School of Economics and Political Sciences, United Kingdom of Great Britain and Northern Ireland.
Email: r.susewind@lse.ac.uk

The past decade since Indian Prime Minister Narendra Modi's first election in 2014 heralded a new phase in the Hindu nationalist movement, also known as Hindutva, in India. While its initial focus (from the early 1900s) lay in ideological persuasion, it moved into violent mobilisation of the imagined 'Hindu' nation against the 'secular' establishment and 'assemblage politics' in the 1980s and 90s. Given its major electoral success in 2014 and 2019, the focus over the past decade shifted towards Hindutva statecraft and governance with the aim to institutionalise, normalise and embed the Hindutva ideology into India's political and social life (Anderson and Longkumer, 2020; Blom Hansen and Roy, 2022; Nielsen et al., 2024). Blom Hansen and Roy (2022) call this phase 'new Hindutva' – a governmental formation which 'does not reject as much as it repurposes and innovates upon constitutional democracy from within' (pg. 6). This takes the form of a 'rejection of established norms and conventions, the full use of discretionary authority to transform and dismantle democratic institutions, acting "as per rule" all the while making a literal and maximum use of its constitutionally authorized power' (pg. 1 and 2). While Modi received an electoral dampening in the 2024 elections, forcing him to rely on coalition politics for his third term, it would be quite premature to see this as an end of Hindutva's wider project – or even as a major impediment for institutional dominance. If anything, encountering serious political opposition may as well intensify attempts by the movement to solidify its grip over key institutions.

Hindutva statecraft under Modi has evolved over his 10 years as Prime Minister. His first term was marked by an uptick in anti-minority violence and the spreading of hate speech by Hindutva-aligned groups, tacitly supported by the ruling party, the Bharatiya Janata Party (BJP). However, since 2019, the administration has made a more concerted effort to embed these Hindutva ideals into the law (Nielsen and Nilsen, 2021). Examples of this include historic hot button Hindutva issues such as the amendment to the Citizenship Act to allow refugees of all religions (except Islam) from neighbouring countries to become Indian citizens, and the removal of statehood of Kashmir, India's only Muslim-majority state. As one indicator of India's broader democratic backsliding, since Modi's ascendancy to the Prime Ministership, the World Justice Project's Rule of Law Index has noted a decline in India's ranking from 59 in 2015 to 79 in 2024 (World Justice Project, 2024).

Law plays a double role in this current moment of 'new Hindutva'. On one hand, the BJP has begun to repurpose laws, create new laws, including constitutional laws, to reshape India according to its ideology. This was particularly notable after Modi's triumphant re-election in 2019, and while it remains to be seen whether the trend of legal consolidation of Hindutva continues under conditions of coalition politics, there is no indication that these laws would be rolled back: they are here to stay. On the other hand, the liberal legal system itself was increasingly hollowed out and starved of resources. Through these more institutional processes, the meaning of law itself morphed: rather than regulating social order, it increasingly took on a signalling or 'dog-whistle' role towards non- or para-state actors for extra-legal enforcement of Hindutva's political ambitions (Nielsen et al., 2024). This dual development – the creation of new laws and the use of those laws to gesture towards vigilantism – sits at the core of this special issue. This particular moment in India's social–political–legal life has been compared to the Jim Crow era in the US (roughly from 1880 to 1965) (Varshney and Staggs, 2024).

Papers by Mohsin Alam Bhat, and Fahad Zuberi and Raphael Susewind, along with the commentary by Amit Prakash frame these effects more broadly, while Indrajit Roy, Yash Sharma and Laura Dudley Jenkins, and M. Sudhir Selvaraj focus on specific laws, as well as their systemic effects. Before introducing these individual contributions, we will however briefly summarise how emerging literature has characterised the current Hindu nationalist moment. This summary demonstrates how the dual development we describe more narrowly in the socio-legal sphere mirrors two broader trends: state-capture on the one hand and blurring of state-society boundaries on the other.

State Capture and Blurred State-Society Boundaries

The key ideological commitment of the broader Hindutva project has always been the emphasis on the 'Hindu', at the expense of those at its margins like Dalits and Adivasis, and those it considers 'outsiders', especially Muslims and Christians. This commitment has shaped the agenda once state capture became a realistic prospect in 2014, and especially after 2019. Drawing on the work of Israeli scholar, Sammy Smooha (1997), Jaffrelot (2021) suggests that India can now be described as an 'ethnic democracy' with Hindutva serving as 'the dominant logic of this system'. As a result, a two-tier citizenship is created which privileges the majority at the cost of minorities; primarily Muslims and Christians. The manufactured majority public opinion is used to justify these practices and thus, made 'legitimate'. Similarly, Indrajit Roy (2021 and 2024), drawing on the work of another Israeli scholar, Oren Yiftachel, argues that India's current system resembles an 'ethnocracy', 'where a dominant ethnos gains political control and uses the state apparatus to ethnicise the territory and society in question' (Yiftachel, 2000, p. 730). In India's case, the dominant ethnos is 'Hindus' with other religious minorities gradually being relegated to the peripheries in social, political and economic life.

But rewriting laws to bag the ideological spoils of state capture is only one side of the coin – the other being an attempt to gradually transform (and in important ways limit) the role of law and legal institutions in the first place. Here, the range of new Hindutva-inspired laws is not only of interest as codification of ideology but as enabling what Jaffrelot (2024) calls the 'deeper state' in the form of the Sangh Parivar. Blom Hansen and Roy (2022) describe the Sangh Parivar as 'a penumbral authority in the contemporary regime, a shadowy and unaccountable presence that insists on its non-political identity even as it facilitates an organised ideological gleichschaltung or a coordinated homogenization across multiple state institutions' (pg. 7). The organisation is committed to 'root-and-branch societal transformation – in the form of a so-called "Hindu Renaissance"' (pg. 7). The Sangh Parivar has been incredibly successful at disseminating the Hindutva ideology into India's social life and has now penetrated into most spheres of public life (Anderson and Longkumer, 2020, pg. 22). Additionally, the Sangh Parivar, along with other vigilante groups, works towards extra-judicial enforcement of laws, and bring 'social issues' to the public and government's attention. As such these laws are written as 'dog-whistle legislation' to signal to and support the extra-judicial enforcement by vigilante groups (Nielsen et al., 2024).

Blom Hansen (2021) explains this by arguing that a new and intensified sense of intimacy and hurt have facilitated the rise of a popular politics of passion and action that in turn has made public violence and the mobilisation of public anger into some of the most effective means of political expression in the country. These sentiments and techniques of what Hansen calls 'the law of force' have been honed and perfected by the Hindu nationalist movement over the past decades. As such, this allows the BJP to implement laws and policies which are seemingly demanded and enforced by a vocal public. This leads to a distinction between what happens officially (politically through the BJP) and what happens unofficially (and often illegally) through other members of the Sangh Parivar. This allows the BJP to keep their hands clean from allegations of anti-minority violence and policies and violating secular norms and values. This 'makes the task of critique and resistance complex and fraught' (Blom Hansen and Roy, 2022, pg. 2).

Contributions to the Special Issue

Our special issue seeks to explore Hindutva's dual use of the law at this juncture. Our contention is that law operates rather differently under such 'ethnocratic' circumstances, both in serving different political and social functions and in following different rules, being designed and practiced differently from its original constitutional imagination. In studying these developments, the articles in this special issue ground more general studies of populist/majoritarian/autocratic law by unpacking the specific Indian variation of it: how does Hindutva as a political ideology and the current dispensation as political agents conceive of the rule of law, its purpose and function? Which rules do they want the law to follow? We combine papers that trace Hindutva's own ideological commitments with those tracking material changes in legislation or jurisprudence and map out their differential consequences for India's minorities.

Our collective main argument is introduced by Bhat (2024) in '"The Irregular" and the Unmaking of Minority Citizenship: The Rules of Law in Majoritarian India'. Through a series of examples drawn from the everyday socio-legal life in contemporary India, the article shows how arbitrary and extralegal state violence is endorsed, affirmed, and acquiesced on grounds of serving ethnonationalist values and interests. It theoretically develops the novel interpretive framework of 'the irregular' to capture the practices of the ethnicisation of the law, ethnonationalist legitimisation of extra-legality through intense political mobilisation, and the production of subordinated minority citizenship without the formal incorporation of graded citizenship.

That law is becoming more overtly discriminatory is perhaps most prominently exemplified by the Citizenship Amendment Act. In 'The Rule of Law in an Ethnocracy: India's Citizenship Amendment Act and the Will of the Hindu Ethnos', Roy (2024) describes the key ideological motifs behind this piece of legislation. Drawing on a variety of sources that include pronouncements by leaders of the Rashtriya Swayamsevak Sangh – the ideological fount of India's ruling BJP, analysis of right-wing periodicals that function as a conveyor belt of social ideas, and the provisions of the Citizenship Amendment Act (CAA), his article highlights the core themes that motivate the will of the Hindu ethnos in respect of the contentious legislation: (i) the persecution of the Hindu minorities in India's Muslim-majority

neighbours; (ii) the discrimination faced by Dalits in particular and (iii) the establishment of India as a Hindu Zion.

Hindutva's ambition to reap the fruits of state capture reaches much further than citizenship laws in the narrow sense. We also see attempts to replicate laws such as the Disturbed Areas Act in Gujarat or the various anti-conversion or cow protection laws in different states across India – each the focus of our next three contributions. In 'Acts of Violence? Anti-Conversion Laws in India', Selvaraj (2024) explores India's Freedom of Religion laws (also referred to as anti-conversion laws) as an example of structural violence faced by India's Christians, with a particular emphasis on the state of Karnataka, often seen as a 'laboratory' for Hindutva politics. In 'Legislation as Disinformation: The Love Jihad Conspiracy Theory in Law and Lived Experience', Sharma and Jenkins (2024) show anti-conversion laws and other ordinances are encapsulating the 'love jihad' conspiracy theory. This conspiracy purports that Muslim men are deceptively seducing or kidnapping non-Muslim women in large numbers to convert and marry them. Sharma and Jenkins demonstrate how legislation against such imagined threats, rather than simply regulating inter-religious marriages, serves as dogwhistles to vigilante justice. In 'Totalitarian Law and Communal Ghettoisation: An Arendtian Perspective' finally, Fahad Zuberi and Raphael Susewind (2024) explore how legal institutions and frameworks are exploited to cement Muslims' spatial segregation in contemporary India. Across three case studies – the Disturbed Areas Act in Gujarat, the 'bulldozer justice' phenomenon of 2022, and the BJP's electoral 'land jihad' rhetoric – they argue that the law, far from being a liberal bulwark against majoritarianism, increasingly comes to encapsulate raw power, unencumbered by either morality or fact.

Zuberi and Susewind theorise this phenomenon through Hannah Arendt's argument that the seeds of totalitarianism lie in the hollowing-out, depoliticising effect of 'juridification', paving the way for totalitarianism to fill the affective void. But what happens to law once the threshold to totalitarianism is crossed? In contemporary India, we argue, the depoliticising, technocratic kind of law that Arendt described is not the only legal pathology; we also witness the emergence of a novel kind of hyper-politicised, performative, signaling, ultimate meaningless law that she didn't quite anticipate. It is the dialectic between these two legal pathologies – juridification as bureaucratisation and hyper-politicised signalling – that cements Muslim Indians' increasingly precarious ghettoisation.

In a critical commentary to conclude the special issue, Prakash (2024) draws attention to the other key player in all of the above: the legal institutions themselves. In 'Autocratic Legalism and Juridical Veto in India', he moves beyond individual laws and individual judgements to draw attention to the increasing number of cases where the judiciary has not spoken, sometimes for years, despite having been petitioned by numerous affected parties and other times under public-interest litigation. The impact of such 'juridical pocket veto' is that legal liminality is allowed to operate and thus, a situation of autocratic legalism is produced wherein the action of the executive or legislature is seen as legal in its technicality but in the absence of adequate judicial review, creates an autocratic outcome for the polity at large, which in turn reinforces governmentalisation and undermines the liberal script. This, we argue, carries significance beyond the Indian case, grounding the increasingly urgent reflection on the rule(s) of law under autocratic circumstances around the world.

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ORCID iDs

Raphael Susewind https://orcid.org/0000-0003-1022-4748
M. Sudhir Selvaraj https://orcid.org/0000-0001-9393-220X

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