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# Totalitarian Law and Communal Ghettoisation: An Arendtian Perspective

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**Abstract**

How are legal institutions and frameworks exploited to create ghettoised communities 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 – we argue that law, far from being a liberal bulwark against majoritarianism, increasingly comes to encapsulate raw power, unencumbered by either morality or fact. We 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, signalling, 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.

**Keywords**

India, ghettoisation, totalitarianism, Hannah Arendt

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How are legal institutions and frameworks exploited to create ghettoised communities 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 – we argue that law, far from being a liberal bulwark against majoritarianism, increasingly comes to encapsulate raw power, unencumbered by either morality or fact. We theorise this phenomenon through Hannah Arendt's writing about the centrality of law for totalitarian projects, and specifically her argument that the seeds of totalitarianism lie in the hollowing-out, depoliticising effect of 'juridification'. While juridification first describes a necessary and liberally hopeful process – the emergence of autonomous, professional law as a check on executive power – Arendt warns us that such juridification inevitably also engenders 'politische Erfahrungslosigkeit' (lack of political experience), as citizens unlearn how to act together towards public purpose, delegating instead to the courts. Juridification, Arendt points out, is thus precisely what paves the way for populist/authoritarian (or, in her terminology, totalitarian) politics: once social relations become depoliticised and juridified to the extent she describes, totalitarianism easily fills the affective void. However, what happens to law once the threshold of totalitarianism is crossed? In contemporary India, we argue that 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, signalling, and ultimate meaningless law that she did not anticipate. This kind of law doesn't actually result in court cases, litigation or other juridifiying attempts to regulate conflict, but directly appeals to populist affect and at best lends a mantle of legitimacy to vigilante 'justice' or violent state action. It is the dialectic between these two legal pathologies – juridification as bureaucratisation and hyper-politicised signalling – that cements Muslim Indians' increasingly precarious ghettoisation.

To address this argument, we develop three case studies. In the Indian state of Gujarat, an arguably unconstitutional and authoritarian piece of legislation – The Disturbed Areas Act (DAA), 1991 – has long restricted inter-communal exchange of immovable property and created stark communal segregation in cities across the state (Tejani, 2022). In our first case study, we demonstrate how this law emerged in a period of neoliberal urban governance as an almost ideal-typical example of what Arendt had in mind when talking about juridification – i.e., the technocratic depoliticisation of social conflict – but is increasingly used in novel ways quite contrary to original policy intent: in areas more recently declared as 'disturbed' we see the new middle classes, apolitical and 'politisch erfahrungslos', obedient to authority and broadly aligned with the Hindu nationalist project, utilising the DAA to ensure maximum distance from various 'others'. The law has flipped from a tool for defusing conflict into an instrument to structurally cement Muslim ghettoisation.

Recently, in a situation that the popular press referred to as 'bulldozer justice', the Indian state has started to demolish the homes of activists in connection with political protests as well as in an increasingly indiscriminate manner, the homes of Muslims living in the vicinity of violence affected areas, often rendering them double victims of first vigilante mobs and subsequently state terror and collective punishment. This is our second case study. 'Bulldozer justice' demolitions are typically carried out with no consideration for due process, and by selectively enforcing arcane municipal bye-laws and building codes that are otherwise routinely ignored. In Jahangirpuri, New Delhi, for instance,

the New Delhi Municipal Corporation demolished several houses and shops owned by Muslim migrants from West Bengal in April 2022 (Mohan, 2022). This action was taken in response to the communal tensions and clashes that occurred after a group of Hindutva supporters shouted Islamophobic slogans and attempted to damage a mosque a few days prior (PTI, 2022). After the Jahangirpuri demolitions, there were numerous other cases of 'bulldozer justice' in Kanpur, Khargone, and Prayagraj/Allahabad. At the time of writing, one of the most often cited incidents is that of student leader Afreen Fatima's family home being demolished after she took part in a demonstration against the offensive comments about Prophet Muhammad made by BJP spokesperson Nupur Sharma. Reports indicate that Afreen's home was destroyed in the presence of the District Magistrate, after being declared 'illegal' by the Prayagraj Development Authority (Rehman and Sahu, 2022). The selective implementation of depoliticised building bye-laws, similar to the Gujarat case, and the personified presence of the state are both significant and, in Arendtian terms, indicators of totalitarianism: they demonstrate, we contend, not only the bureaucratic de-humanisation of politics and thereby a divorce between political experience and law, but also the politicisation of law. Consequently, 'bulldozer justice' has been rapidly streamlined as an efficient mode of affective totalitarian governance in contemporary India. In a rare moment of judicial clearsightedness, following a particularly violent demolition drive of more than 300 Muslim properties in the wake of violence in Haryana's Nuh district in July/August 2022, the Punjab and Haryana High Court aptly reframed the phenomenon of 'bulldozer justice' as de facto 'ethnic cleansing by [the] state' (The Times of India, 2023; Al Jazeera, 2023).

What, then, might the future hold? For our final case study, we look at Assam, where in March 2021 the BJP promised to pass laws to address the 'menace of Land Jihad' during its election campaign; after its subsequent majority victory, the party is expected to create and enforce these laws in the coming years (Zuberi, 2021) and has also since used similar language in other places, such as Gujarat (Tejani, 2022). In this final case study, we contend that the current wave of hyper-nationalism has removed facts and ethics not just from legal interpretation and implementation but from the law-making process itself, instead signalling vaguely towards a totalitarian notion of 'national will'. Overall, we thus concur with Arendt's view on how depoliticised law can lead to totalitarianism, and we go a step further and inquire into how such authoritarianism can in turn cause law to be reinvented as a mere mimicry of its liberal form.

Taken together, these three case studies demonstrate how authoritarian governments construct homogeneous urban neighbourhoods through particular legal and political procedures. In all three cases, the state's actions infringe upon the liberal constitutional right to own private property, yet still remain within the legal framework, pitting law against law: the state limits or punishes voluntary trade, pitting morality against law, and communal propaganda – such as the conspiracy theory of 'land jihad' – serves as its justification, pitting facts against law. More and more, legislation is based solely on signalling and dog whistle rhetoric, and conspiracy theories are used to gain public approval. We analyse the trajectory of these laws – established in Gujarat, abused in Delhi, Haryana and Uttar Pradesh, and freshly proposed in Assam – to observe how they contribute to a more divided society, thus reinforcing authoritarian rule. In terms of wider spatial

politics, we attempt to theorise a cycle of ghettoisation where ghettoisation is not only caused by direct physical violence, but is more indirectly also the result of these two dialectically intertwined legal pathologies. To provide an empirical context and support our pursuit of a more radical conceptual heuristic, we will briefly review the literature on the segregation and ghettoisation of Muslims in modern India. This will be followed by an introduction to Hannah Arendt's thoughts on law and totalitarianism, before we move on to our case studies.

## Ghettoisation of Muslims in Contemporary India

India's 'long partition' (Zamindar, 2010) displaced millions of people, with particularly strong effects in Northern India, where large swaths of the more educated and richer Muslim urban middle classes left cities like Delhi, Lucknow and Kolkata for Lahore, Karachi and Dhaka. Beyond direct material effects, partition also reflected and reinforced distinct hegemonic nationalisms in India, Pakistan and later Bangladesh, all of which circle around imaginations of Muslims as 'own' or 'other'. This had lasting consequences for both dissenting voices within Muslim communities and, in India, the relation of Muslim minorities with non-Muslim majorities. Rather than continuing to celebrate a distinct intellectual or even just architectural Indo-Islamic confluence in India, contemporary accounts of urban life thus foreground the opposite: ritual decline, crumbling networks of patronage for artists and artisans, socio-economic marginalisation, and ultimately violence, displacement, riots, and anti-Muslim pogroms.

By one prominent count, India has suffered hundreds of so-called communal riots since independence, claiming over 40,000 lives (Wilkinson, 2007). Not all of these were anti-Muslim riots – one notable exception being the anti-Sikh violence following Indira Gandhi's assassination in 1984, but many were, especially after the BJP and allied Hindutva forces rose to political prominence on a wave of communal polarisation in the 1980s and the 1990s (Corbridge and Harriss, 2000; Jaffrelot, 2006). An important watershed was the destruction of an ancient mosque in Ayodhya in Uttar Pradesh in 1992, and subsequent riots in Bombay and elsewhere (Blom Hansen, 2001; Robinson, 2005). Paul Brass (2006), who has studied such 'riots' for decades, concludes that a vicious circle between immediate instrumental calculations by political entrepreneurs and widespread anti-Muslim prejudice and Hindu nationalist sentiment has led to 'institutional riot systems' in many Indian cities: 'riots persist because they are functionally useful to a wide array of individuals, groups, parties, and the state authorities', but also because a 'discourse of Hindu-Muslim communalism […] has corrupted history, penetrated memory, and contributes in the present to the production and perpetuation of communal violence in the country' (Brass, 2006: 33). Given the existence of such institutionalised riot systems, frequent media emphasis on 'balance' in reporting 'clashes involving one (or several) particular communities' has been deeply misleading, obscuring the fact that the overwhelming number of victims of such urban violence have been Muslims. It also disguises the extent of state complicity in a number of such 'riots', most egregiously perhaps in the Gujarat pogrom of 2002, which took place when the current Prime Minister Narendra Modi headed the State Government and was widely seen as different not just in quantity of lives lost and victims displaced, but also in the quality of state

sponsorship (Robinson, 2005; Gupta, 2011; Ghassem-Fachandi, 2012; Nampoothiri and Sethi, 2012).

The cumulative consequence of decades of such riot systems in operation was brought home with the publication of the Sacchar report (Sacchar, 2006). Commissioned by the Congress-led United Progressive Alliance coalition government, the Sacchar report marked a watershed in academic and popular debates about Muslim Indians' everyday realities. The report was ground-breaking in its methodology, proposing a comparative assessment of Muslims' socio-economic position rather than taking a purely Muslim-centric view, as earlier reports had done. Its key finding was devastating: across many indicators, Muslim Indians were worse off than Dalits and STs, for whom the Constitution mandated positive discrimination in response to historical oppression. At the same time, the Sacchar report shifted attention from a focus on the partition, 'institutional riot systems', and seemingly primordial antagonism between Muslims and non-Muslims to the more gradual domain of economic conditions, educational achievement, public health, and civic representation (Sacchar, 2006; cf Basant and Shariff, 2010). The report also painted a more nuanced picture of Muslim elites and their political and economic power bases, including the study of *awqaf* properties in many cities. The report and its unrefutable statistical evidence sparked widespread debate about the causes of Muslims' socio-economic segregation, which includes both partition and communal 'institutional riot systems' but extends far beyond these factors.

Over the subsequent decade, we have seen a growing body of literature that (a) continues to compare Muslims' fate in Indian cities to that of other marginalised groups (i.e., Bhan and Jana, 2015; Sidhwani, 2015; Thorat et al., 2015), (b) unpacks the mechanisms of segregation and ghettoisation beyond communal violence as a root cause (i.e., Jamil, 2017; Susewind, 2015; Verstappen and Rutten, 2015) and (c) nuances our understanding of the degree and nature of segregation across various cities, bridging the gap between an India-wide narrative and isolated case studies by developing typologies of exclusion (i.e., Gayer and Jaffrelot, 2012; Galonnier, 2014; Susewind, 2017). Ultimately, both the riot-centric and post-Sachar debates about Muslim spatial segregation converged on Laurent Gayer's and Christophe Jaffrelot's seminal volume on 'Muslims in Indian cities: trajectories of marginalization' (Gayer and Jaffrelot, 2012).

Gayer and Jaffrelot differentiate among three ideal-typical trajectories of marginalisation: 'the first combines the post-Partition fall and identity politics, while the second is over-determined by communal violence and political (sometimes cultural) obliteration and the third by some resilient cosmopolitanism' (Gayer and Jaffrelot, 2012: 320). They argue that these different trajectories result in three distinct patterns of segregation in nonlinear ways: ghettos, enclaves, and mixed areas, with the ghetto being the starkest configuration in which five elements come together (Gayer and Jaffrelot, 2012: 22; cf. Susewind, 2017 for an empirical critique of their typology):

> [1] an element of social and/or political *constraint* over the residential options of a given population; [2] the *class and caste diversity* of these localities, which regroup individuals from different social backgrounds on the basis of ethnic or religious ascribed identities; [3] the *neglect* of these localities by state authorities, translating into a lack of infrastructure, educational facilities, etc.; [4] the *estrangement* of the locality and its residents

from the rest of the city, due to lack of public transportation as well as limited job opportunities and restricted access to public spaces beyond the locality; and [5] the subjective *sense of closure* of residents, related to objective patterns of estrangement from the rest of the city.

While this definition originated very much in a time when ghettoisation of this kind was a limited phenomenon in a few states, notably Gujarat, we already see here a fresh emphasis on the role of the state as well as on more absolute rather than incremental forms of exclusion especially when it comes to the policing of communal riots. As we will argue in this paper, such emphasis on the state is crucial but needs to reach beyond the study of the police or other violent entrepreneurs within the executive (Blom-Hansen, 2021) or of electoral politics and its relation to anti-Muslim pogroms (Wilkinson, 2007), and address head on the increasing pathologies of law and jurisprudence that form the centre of this special issue. This becomes an even more pressing research agenda as most studies on spatial segregation in India remain fundamentally rooted in liberal assumptions. Their conceptual inspiration largely comes from – often econometric – studies of the concempotary US-American ghetto (Varady, 2005; Thorat et al., 2015; Susewind, 2015). It is our contention that this conceptual import steeped in liberal ideas has become less and less useful given the increasingly structural shifts in how law operates under contemporary Hindutva rule. Hence, we started to look for theoretical and conceptual inspiration elsewhere and find one such useful lens in the work of Hannah Arendt.

## Hannah Arendt's Understanding of Totalitarianism and Law

As the state has become more overt in its use of violence and discrimination, including through laws like the Citizenship Amendment Act and Love Jihad Laws discussed in this special issue, it is essential to examine the fundamentals of state formation, law-making, and judicial practice to comprehend the ghettoisation of Muslims in India. At this point, we contend that Hannah Arendt's interpretation of the political realm, her idea of law, the connection between Law and Politics, the over-politicisation and de-politicisation of law, as well as 'organised lying' under totalitarianism become especially helpful. To begin with, we should however make it clear that our interest in Hannah Arendt is not a futile argument about whether modern India is heading towards the type of totalitarianism she primarily had in mind, manifested in Nazi Germany and Stalinist Russia. Rather than making such historical comparisons or formal classifications, her work – primarily as articulated in 'The Origins of Totalitarianism' (Arendt, 1973) serves as a heuristic tool: it helps us to trace the pathologies of law. With her help we can more clearly see how juridifying depoliticisation through bureaucratisation and signalling hyper-politicisation underpin and sustain the formation of a violent state structure quite distinct from previous forms of executive overreach, in which all state function gets reconfigured to serve the interest of the movement.

Arendt begins her argument by asserting the foundational liberal premise that the ultimate source of power for a secular modern state ought to be the people themselves engaged in reasoned debate: she asserted that power is the ability of a group to act

together for a public-political purpose (Arendt, 1972). She distinguishes power from strength, force, and violence as the quality of an individual to come together and form a political public 'space of presence'. To quote Arendt, the political realm is a space '…where I am seen by others as they are seen by me, where people exist not just like any other living or non-living thing but to make their presence known … where people communicate and express themselves in a shared manner'. In the political realm, open communication between people establishes political order; it is the backdrop on which the political dialogue is enacted to ensure that the 'space of appearance' is not threatened. Consequently, the political realm is sustained by its own critique (Arendt, 1963).

Therefore, a totalitarian hollowing out of the public realm as a discursive space – cannot be and is not without consequence. In Arendt, only a secular authority that is formed from the interactions between the people and is subject to its own continual evaluation could establish a steady political system (Arendt, 1963). Based on constant self-critique, the Arendtian political structure is delicate and must be continually reinforced and the legal sphere plays a crucial role in this process of political renewal.

## *Depoliticisation as Bureaucratisation*

Arendt warns about the draining of political experience from the making and practice of law (Arendt, 1972). While law relies on the public political realm for its constant re-constitution, its use in the legal system is based on bureaucratised reasoning. Even though law is derived from politics, it thus becomes a distinct and separate realm of state power in which the practice of law is based on the logical and rational interpretation of law by legal experts. This, in Arendt, drains political experience from the practice of law and reduces the human to a legal entity instead of a political creator of worlds (Arendt, 1958). A cold bureaucratisation of law divorces it from virtues and vices that political experience and the public realm generate – depoliticising it through bureaucratisation.

## *Hyper-politicisation of Law*

If law is instead based in sovereign will writ absolute, on the other hand, without legal precedent and convention tempering decisionism in Carl Schmitt's sense, then it paves way to totalitarianism. Arendt observed this phenomenon take place in Europe during the 1920s and 1930s, where sovereignty was regarded as the ultimate unquestionable authority and 'bureaucrats and agents of the state [were] expected not just to implement orders / laws, but to intuit the "will" and intention behind these orders' (Arendt, 1973: 523). This deviation from depoloticising bureaucratic implementationalism was achieved by inserting broad and sweeping clauses such as public safety and public order within the legal framework of various European states. These clauses are based on the political desires of a state in service to the perpetual totalitarian movement, not on morality or ethics. The emergence of law from sovereign will writ absolute, rather than from a liberally tempered political realm of reasoned deliberation or established bureaucratic practice

thus hierarchises and shifts the law-politics relationship in favour of politics. In this legislative environment, the sovereign will retains the power to veto decisions made by the judicial system and through 'organised lying' makes truth irrelevant in the formation and practice of law (Arendt, 1971). As such, totalitarianism is hyper-politicising law and draining ethics and truth from it:

> totalitarian lawfulness, defying legality and pretending to establish the direct reign of justice on earth, executes the law of History or of Nature without translating it into standards of right and wrong for individual behavior. It applies the law directly to mankind without bothering with the behavior of men (Arendt, 1973: 606)

## *Two Pathologies of Law in Contemporary India*

Reading from Arendt, we see depoliticisation as bureacratisation of law and its hyper-politicisation as the two legal pathologies we in contemporary India. In such a system, as we will show in this paper, law is no longer the instrument of empowerment but one of the oppressions of the other of the nation. Depoliticisation of law allows for authoritarian implementation of law that is separated from political virtues and vices and, in the sphere of electoral politics, the hyper-politicisation of law drains truth from it and lends law to be an instrument of electoral promises and rhetoric.

In its hyper-politicisation, the promise of enacting law(s) without any basis in facts or ethics became a prominent feature in electoral campaigns targeted against the 'other'. The rhetoric of the electoral campaign (alone) establishes the grounds upon which law is created, as opposed to truth and ethics. The political will of violating the natural human rights of the 'other' therefore, can be executed legally and law-making is achieved through a destruction of critique (as in the public realm) and organised lying. Law-making that relies on sovereign will, and not on interactions in the political realm and truth hyper-politicises law.

When law is limited to the judicial realm and relies exclusively on reason for law-making or legal interpretation, in contrast, it is depoliticised – which is arguably the other pathology, risking as it were to create a political void that will eventually be filled by populist sentiment. Arendt interprets this as the legal formalisation of the law, which she criticises for being limited to a select group of jurists and excluding people from its formation, or at the very least, reducing the role of people in the process of making and enforcing laws (Arendt, 1958). Furthermore, even if the juridification of law is only applicable to its interpretation and not its creation, the practice of law-making is disconnected from the practice of law enforcement. Therefore, a system of legality based on civic deliberation among experts eliminates any room for opinion-forming and fails to meet the emancipatory aim of restoring the political public realm and, in Arendt's philosophy, establishing political order. Arendt argued that juridification results in the depoliticisation of public life (Arendt, 1995). This has an unavoidable effect on political order, resulting in a lack of democratic understanding among the public and a lack of faith in political elites, which manifests as political apathy. In this case, law is placed higher in the hierarchy than politics – which, Arendt argues, is

equally pathological. Our case studies demonstrate how such juridification of law also ultimately empties it of moral substance: it is merely implemented and enforced by bureaucracy or courts, thus eliminating the political sphere that could challenge its abuse (or use).

In the end, both pathologies of law under totalitarianism – bureaucratised depoliticisation and signalling hyper-politicisation as well as their dialectic reinforcement of each other – thus need to be critiqued. On the one hand, the implementation of certain laws that legalise ghettoisation in India is based on a highly politicised system of law-making, where the law is determined solely by the apparent national will expressed through electoral mandate. On the other hand, we also observe that the implementation of such a law appears deceptively non-partisan. To better understand this situation, we use Arendt's work to explore how altering the connection between Law and Politics allows the government to pass authoritarian laws that create segregated cities and, simultaneously, gain legitimacy through elections. Grasping hyper-politicisation as a system of law-making in contemporary India equips us with the means to comprehend legalised ghettoisation in a society that holds elections and claims to be democratic on that basis. Meanwhile, examining how law is depoliticised and applied assists us in understanding the disconnection of political morality from the essence of law.

## First Case Study: Disturbed Areas Act, Gujarat

The Disturbed Areas Act (1991) is a commonly used term for the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in the Disturbed Areas Act, 1991. The legislation was originally passed by the Gujarat Legislative Assembly in 1986 and was later repealed and replaced by the current version. The Act restricts inter-communal exchange of immovable property, which is subject to the appeal made for the same to the District Collector. After hearing the parties involved in the transaction, the Collector holds the power to term the sale a 'distress sale' and prohibit the exchange from taking place (Dhar, 2018). For example, a Hindu owner of immovable property (real estate) in an area that has been declared as 'disturbed' by the State Government cannot sell their house to a non-Hindu buyer without getting it cleared from the District Collector. Apart from being a violation of fundamental rights and a major hindrance in free trade, the Act provides immense power to the District Collector – an unelected official–to control housing patterns and religious makeup of the region.

The state of Gujarat and the city of Ahmedabad have seen a long history of communal divide manifesting as violence. The riots in September 1969, for example, have been seen as the worst of their kind since the partition (Engineer, 2002). This was further exacerbated by the closing of the textile mills and workers' unions, where Hindus and Muslims alike found some common socio-economic grounds for solidarity (Engineer, 2003). Soon after the riots of 1969, a large number of Muslim deaths and the extent of violence that lasted for months pushed the Muslim community into a state of fear. Many parts of the old city started becoming homogenised and ghettoised.

This divide was actively harvested by the RSS and the Jan Sangh to peddle the Hindu Rashtra's political narrative. In the riots, around 48,000 people lost their properties either

to distress sale – a phenomenon where the affected minority sells property and relocates to safer areas in the wake of violence – or to encroachment from real estate mafias (Engineer, 2003). More instances of riots occurred across Gujarat in the following decades, particularly in the 1980s. The Chimanbhai Patel led the Congress State Government, hence, in passed the Disturbed Areas Act in its present form in 1991 with the stated objective of preventing distress sale after instances of communal violence. In 2018, the Act was amended to restrict the use of powers of attorney in property transfer, strengthening the act's purview further (Tambi, 2018). Despite absence of organised communal violence in Gujarat since 2002, there has been an incremental increase in the Act's application. At present, more than 700 areas across 30 police stations in Ahmedabad, for example, are marked as 'Disturbed' in Gujarat (for a mapping of such areas in Ahmedabad city, see Tejani, 2022).

How does such an act sustain itself despite very evident contradictions to the values of the Indian Constitution? Articles 19, 20, and 21 of the Indian Constitution are the basis for several legislations that guarantee the citizens of the Indian Republic their fundamental rights, which include, but are not limited to, the right to freedom of speech and expression, the right to life, the right to individual liberty, etc. One such right is included in Article 31 of the Constitution. Article 31 guarantees that every citizen has the right to privately own property. This also includes immovable properties. Lawyers have argued that the Disturbed Areas Act of 1991 violated Article 31 of the Indian Constitution (Dhar, 2018). However, there are restrictions on most rights that are guaranteed to citizens. Section 31A(b) of the Constitution does allow the right to be restricted for 'public interest' or in order to secure 'proper management'. The question, then, arises as to whether the Disturbed Areas Act, 1991 can exploit this section of the Constitution. The answer is subject to what defines the 'public interest' and 'proper management'.

At this juncture, we see depoliticisation of law through bureaucratisation that creates communal segregation. First, bureaucratisation of DAA allows for arbitrary invocations of 'public interest' and the law's separation from truth and implementation through 'organised lying'. It is noteworthy that the ruling governments in Gujarat have claimed that the state has remained peaceful since 2002–20+ years at the time of this writing, and that no major incidents of communal violence or curfew have been observed since. Moreover, Gujarat has been marketed worldwide as a state that invites foreign investment and is a prosperous opportunity for businesses. The annual Vibrant Gujarat Summit, addressed by Prime Minister Narendra Modi in 2019, takes pride in inviting businesses from all over the world (Nair, 2019). The National Bureau of Crime Records (NCRB) ranked Gujarat 11th according to the number of crimes committed in 2016. Uttar Pradesh ranked the highest in this comparison (NCRB, 2016). Still, the state has been expanding its list of Disturbed Areas since 1991. No area on the list has ever been declared 'no longer disturbed'. In the absence of violence, no ground of 'public interest' can be found for areas to be added to the list of Disturbed Areas. We see that it is through bureaucratisation that an arbitrary invocation of public interest and management is made possible. Arendt calls these 'blanket clauses' that substitute arbitrary 'public interest' for political interaction in the practice of law.

Second, bureaucratised depoliticisation of the DAA, also shows its separation from ethics of politics. It is evident from the history of communal violence in Gujarat that

ruptured social fault lines define the state's communal landscape. We see that the events that led up to the enactment of the Disturbed Areas Act – organised communal violence, housing precarity of victims through encroachment and migration through distress sale – are fundamentally social and political in nature. A bureaucratic exercise of the DAA completely depoliticises these issues. It relegates political problems between (political) participants to bureaucratic regimes that enact laws on people – reducing the human to a mere legal entity. In simpler terms, while the spatial logic of the city is socio-political, whether a person can live in a particular part of the cities of Gujarat and, therefore, the ethno-religious makeup of the city's neighbourhoods is determined by a bureaucratic reading of law with no hope for political reckoning. In Gujarat's depoliticised society, ghettoisation loses its meaning as a political issue. It shifts to a completely bureaucratic regime, where it loses the moral meanings that it ought to carry. Moreover, the phenomenon of distress sale also gets drained of its politics. When an individual decides to engage in an inter-communal consensual trade of immovable property, that is, buying or selling their real estate, the politics of people selling their real estate to escape dangerous neighbourhoods where instances of communal violence occur, is depoliticised and made meaningless through bureaucratisation. As our discussion of Arendt states, this depoliticisation has induced political paralysis – a disappearance of the ability to exercise democratic dialogue – among the citizens of Gujarat. The extent of the complete depoliticisation of the problem of communal divide is also evident from the fact that civil society has paid very little attention to the Act. Nidhi Tambi, writing for The Wire, called the Act 'The Communal Elephant in the Room', which nobody is ready to address, let alone tame (Tambi, 2018).

In DAA, we also see hyper-politicisation of law, the other extreme of this pathology, used to exclude Muslims from Gujarat's urban centres. Several election campaigns in Gujarat feature the implementation of the DAA as an electoral promise. During the 2017 Gujarat legislative assembly election campaign, for example, the BJP candidate Sangita Patil in the constituency of Limbayat in Surat promised to her electorate that Limbayat would be declared 'disturbed' if she came to power (The Times of India, 2019) and won on the promise. On 15 March 2020, the Act was imposed in Limbayat (The Times of India, 2020) and the area declared 'disturbed'.

As the DAA becomes an electoral promise and gets consumed by political rhetoric, we see two features of hyper-politicisation. First, we see the practice of law becoming contingent on organised lying, as Arendt calls it, and separated from truth. The rhetoric of 'land jihad' – a conspiracy theory by the Hindu right wing in India that says that Muslims want to dominate Hindu areas by buying real estate – becomes the ground on which the DAA can be implemented and invoked. Such organised lying dominates the campaign rhetoric and subsequent promises in campaigns such as that of Sangita Patil's and relies solely on political rhetoric as the basis of legal action. Second, we see a shift in the meanings associated with the word 'disturbed'. The conspiracy of 'land jihad' and the electoral promise of DAA, paint the presence of a Muslim in the city as a disturbance itself and the exclusion of the Muslim from that area as the direction of political action. Declaration of a constituency as 'disturbed' is promised as a solution to a false threat. While, in the aftermath of violence, the act had recognised the 'disturbed area' on the basis of likelihood of further violence, hyper-politicisation of the DAA

changes the meaning of this disturbance to the mere presence of a Muslim household. The Muslim household on which legal action, through hyper-politicisation and in violation of fundamental rights, is legitimised.

The case of the DAA explicitly shows the dialectic of depoliticisation as bureacratisation and hyper-politicisation operating to create urban segregation in India. While the emergence of the Act depoliticises ghettoisation in Gujarat, after three decades of its operation, we also see a feedback loop – now from Law and Politics – where the act of politics is no longer about investigating the ethics of law-making and law-implementation (which Arendt describes as internal referencing between Law and Politics), it becomes about using law as an enabler and the sustaining mechanism of social fault lines. These fault lines, which manifest as a physical divide in the city's urban fabric, sustain themselves through such feedback (Zuberi, 2021).

## Second Case Study: From Jahangirpuri to Uttar Pradesh: Bulldozing the Law

More recently, the weaponisation of depoliticised, bureaucratic law – in this case, building bye laws, municipal regulations, and the like – by the majoritarian state against its own citizens found a new iconic form that soon spread like wildfire: the destruction of primarily Muslims' homes in the wake of political protests, often with little to no regard to due process and by selectively applying laws that are otherwise routinely ignored.

The wave of 'bulldozer politics', highly televised and iconic in its imagery, began in Madhya Pradesh's Khargone district on 12th of April 2022, following a rioting during the Ram Navami celebrations. Rather than going after those spewing hate, the authorities destroyed the homes of those merely suspected of rioting, or whose relatives were suspected of rioting that took place less than 24 h prior. This swift extra-judicial punishment proved so popular in the Hindutva media ecosystem that in Jahangirpuri, New Delhi, several houses and shops belonging to Muslim migrants from West Bengal were demolished by the New Delhi Municipal Corporation a few days later (Mohan, 2022). The move followed a similar pattern: communal tensions and clashes that erupted after a mob of Hindutva supporters chanted Islamophobic slogans and attempted to desecrate a mosque on 16 April 2022 (PTI, 2022), political rhetoric of 'bulldozer action' and use of municipal acts and bye-laws to demolish houses.

What was notable in the Delhi case was the two legal manoeuvres. First, at least some of the demolition was carried out under the legal mantle of housing bye-laws that declared homes and shops to be illegal 'encroachments' upon public land and right-of-way, and/or violating relevant building control regulations. Of itself, this provides a mantle of legitimacy to the demolitions – until one considers that in Delhi, in particular, a large proportion of real estate is in a similar legal limbo; in fact, it is a feature of Delhi's urban growth rather than an irregularity and has been so since the Emergency and partition (Bhan, 2016). In this legal-administrative context, the question is not so much whether a legal justification for demolitions could be found, but rather why it was selectively found in this case only, the case of Muslim homes in this particular locality. Hiding behind

applicable bye-laws is exactly what Hannah Arendt described as depoliticisation as bureaucratisation, the replacement of political exchange and argument (which might be communal in nature in this case) with law.

This leads to a second notable feature of this case: in an increasingly rare instance of speaking up to the ruling regime, the Indian Supreme Court saw right through this biased application of obscure bye-laws, intervened, and ordered a halt to the demolitions, which continued for several hours. In this example, we see two legal key ingredients to 'bulldozer justice': on the one hand the reliance on – or some could say the exploitation of – the most extreme form of depoliticised law in the form of municipal building bye-laws – coupled on the other with explicit contempt for due process and law as a strategy of regulating social or political conflict – a form of hyper-politicisation of law. We see two forms of hierarchy between Law and Politics manifest at two ends of the state: one, depoliticised bureaucratic law that can be read with an apolitical front, and second, the hyper-politicisation of a seemingly apolitical regulatory framework through selective implementation and penalisation in the built environment. The former allows for a matter-of-fact intervention into 'illegal encroachments' and the latter, at the same time, creates the spectacle of the dirty other and the criminal – the Muslim – getting instant response for protest and/or disobedience. In the latter, we see raw power in action, using law if at all then as fig leaves, while political masters spell out the real reasons behind such 'encroachment drives' that are clear to a discerning public (and, in this case, court). Arendt understood this use of raw spectacular power as a defining feature of an 'unquestionable sovereign authority'.

The Delhi case was followed by several more incidents of what came to be known as 'bulldozer justice' in Kanpur, Khargone and Prayagraj. As of this writing, the latest case is that of student leader Afreen Fatima's house in Allahabad, who had participated in a protest against derogatory remarks on Prophet Muhammad made by BJP spokesperson Nupur Sharma. According to reports, Afreen's house was demolished in the presence of the District Magistrate after being claimed to be 'illegal' by the Prayagraj Development Authority (Rehman and Sahu, 2022).

In these cases, in Uttar Pradesh, the new repertoire of 'bulldozer justice' was perfected, but they built on important antecedents in the state. A year earlier, in May 2021, for instance, we observed the occurrence of another Arendtian phenomenon. Yogi Adityanath's government forcefully acquired Muslim houses in the vicinity of the Gorakhnath Temple in Gorakhpur, of which Adityanath is the chief priest (Zuberi, 2021). In this case, political justification was explicit: 'public safety'. Al Jazeera at the time reported that all property owners were forced to sign a 'consent letter', which said the residents living on the southeastern side of the Gorakhnath temple had given their 'consent to transfer or hand over (their) lands and houses to the government' for the 'safety of the temple premises'. Meanwhile, Masihuzzama Ansari, a Delhi-based journalist who covered these forced evictions, was threatened by the District Magistrate with arrest under the Draconian National Security Act (NSA). Public safety forms the sub-clause of the blanket clause 'public interest' in Arendt's understanding of the manifestations of the hierarchy between Law and Politics.

In these cases we saw the disregard for due process and vague anti-Muslim appeal to 'public safety' – empty, not backed by fact, blanket and extremely broad (including the

threat of NSA against Ansari) – used for spatial restructuring and exclusion. This was perfected more recently as the perversion and selective use of building bye-laws in the use of bulldozers to demolish the living environments of Muslims, as 'bulldozer justice' has been streamlined as an efficient mode of affective totalitarian governance in contemporary India – even termed 'ethnic cleansing by state' by the Punjab and Haryana High Court in a rare moment of judicial clearsightedness, following a particularly violent demolition drive of more than 300 Muslim properties in the wake of violence in Haryana's Nuh district in July/August 2023 (The Times of India, 2023; Al Jazeera, 2023). In the case of 'bulldozer justice', we see the pathological dialectic of depoliticisation and hyper-politicisation of blanket clauses of public interest, Municipal Acts and Building Bye-Laws as the primary mechanism that is used to displace Muslims, produce housing vulnerability and threaten Muslim dwelling in contemporary Indian cities.

## Third Case Study: Assam's 'Land Jihad'

To see how a new kind of law may evolve from purely political rhetoric and to observe the same in its nascent stage, we must look at the election rhetoric of the Bharatiya Janta Party that lays ground for hyper-politicised law-making through organised lying, as Arendt calls it, aimed at creating segregated housing patterns. In the Assam Legislative Assembly Elections in 2021, for instance, the BJP's manifesto featured its promise to enact 'appropriate laws' to curb 'the menace of love jihad and land jihad' in the state. Although it is granted only three lines in the entire manifesto, the issue of 'land jihad' was featured prominently in the Union home minister Amit Shah's speech on 26 March 2021, in Guwahati (Hasnat, 2021). The party emerged victorious in the polls; therefore, these laws are likely to be formulated and implemented.

> 'Land jihad' is a conspiracy theory in the Hindutva narrative that claims that Muslims are waging a religious war on Hindus by buying real estate in Hindu majority areas with the aim of dominating the neighborhoods and gradually executing a Hindu exodus. Just like the rhetoric that created legitimacy for the 'love jihad' law preceded the legislation in Uttar Pradesh, the rhetoric around 'land jihad' gained pace in BJP's election campaign in Assam. More importantly, just as there are no records or legal definitions of 'love jihad', the 'menace of land jihad' also remains undefined and unrecorded and targets consensual real estate transactions between individuals (Zuberi, 2021).

In BJP's election manifesto for Assam, the promise to enact laws against land jihad featured under the heading 'Protection of Civilization in Assam'. As the suffix 'jihad' implies, 'land jihad' is allegedly executed by Muslims and therefore, the 'civilisation' of Assam needs protection from Muslims buying real estate. It also implies that it is the Hindu population of the state that has the first right over the land and Muslims buying land in an area of their choice is a religious war waged by an illegitimate outsider. Talking to the news website The Print, Assam BJP vice-president Swapnaneel Baruah was quoted as saying:

> Land jihad is a way to force people sell off their lands — it happens anywhere where there are miyas (Bengali-origin Muslims in Assam). Cases have been reported in Sorbhog, Dhubri, and border immigrant-majority areas. They corner the landowner, making the land uninhabitable, sometimes by stealing cattle and throwing chopped heads of cattle into courtyards. Ultimately, the owner is forced to sell the land. A third party comes into play, and an offer is made to the owner to purchase land. A broker was involved and the land was captured (Hasnat, 2021).

It is notable here that the history of Assam has been dotted with instances of migration from Bangladesh (East Pakistan). Large populations of Bengali-speaking Muslims settled in parts of Assam following the liberation of Bangladesh in 1971. These settlers have been looked at as 'encroachers' of indigenous Assamese land and as a blanket move, the BJP, during its elections, used a common term 'miya' (Muslims) to address Bengali-speaking Muslims. The interchangeability exercised by the party over the years gives it a chance to turn a communal and divisive issue into that of border security and citizenship and vice versa. It allows for rhetoric to create an argument for the Hindus of Assam to have first rights over lands in the state and thereby enact laws such as that of Land Jihad. Assamese indigenous identity is conflated with the Hinduism of the people.

This is evident in home minister Amit Shah's speech. Speaking at an election rally on 26 March 2021, he accused Badruddin Ajmal, the leader of the All India United Democratic Front (AIUDF), of 'changing the identity of Assam through land jihad'. His speech implied that Assam's identity is not inclusive of Muslims, and Muslims buying land in Assam morphs this supposed identity. In this context, the Union home minister also used the word 'infiltrator' to refer to the perpetrators of 'land jihad', further characterising the minorities as unwanted others and peddling the conspiracy theory of land jihad (Hasnat, 2021).

In the case of Assam elections, we see the role played by rhetoric and constructed fear in the formation of the law. From the point of view of Hannah Arendt's philosophy, the rhetoric of Assam elections, whereby the BJP promises a law against land jihad in their manifesto and in their speeches, is, again, a good example of the creation of a hierarchy between politics and law. In such a system, law does not arise from contractual horizontal agreement between citizens but from political rhetoric. Furthermore, the hyper-politicised law is achieved through 'organised lying' and can be completely unmoored in facts.

It is also important to note here that while Hannah Arendt argues for a conversation between Law and Politics such that law does not become purely juridified and opinion-making is maintained as apart from political public life, she also argues for the autonomy of both in function and creation. In Assam's case, we see the creation of a law emerging from political propaganda. Moreover, the promise of the law in the manifesto of the BJP is also representative of electoral will become synonymous with sovereignty and sovereignty (exercised through elections in this case and legitimised by electoral means) becoming the sole basis for the creation of law. The manifesto promises a law against land jihad if the BJP wins (which they did), but the term 'land jihad' has no factual or rational basis whatsoever.

Arendtian terminology also provides an insight into the negotiations that minorities have to resort to when they fall outside the sovereign will of the nation. The othering of Muslims in this rhetoric is both the outcome and point of origin of the law. This, as Arendt explains, is a phenomenon that traverses geopolitical borders, as it did in twentieth-century Europe (Arendt, 1973). In Arendt's philosophy, the hierarchy between politics and law eventually leads to totalitarianism, violence, and the destruction of the political order. In the case of Assam, we see the beginning of the creation of a law such as the Disturbed Areas Act in Gujarat and the Love Jihad Law in Uttar Pradesh – representing law-making through hyper-politicisation and organised lying.

## Conclusion

As the case studies demonstrate, Arendtian terminology and philosophical analysis show how legal means of segregating cities arise from a pathological dialectic of bureaucratic depoliticisation and hyper-politicisation of law.

As seen in the Disturbed Areas Act; the creation and sustenance of segregated cities is accomplished by draining the moral-political question of segregation and right to the city of its politics, and assigning communal segregation to realms of bureaucracy that can exercise arbitrary and unaccountable brute force and legal restrictions on communal intermixing. In the case of Disturbed Areas Act, we also see hyper-politicisation of law, where the term 'disturbed area' becomes an element of electoral promise and loses its undesirable meanings, and a legislation, masked as a measure to prevent distress sale, mutates the 'disturbed area' into a necessity, a desired label, promised to save the electorate from the constructed threat of land jihad.

In case of bulldozer demolitions mentioned above, we see the selective application of 'apolitical' infrastructural regulatory frameworks to exercise violence in the form of destruction of homes through the legal instrument – circumventing the criminality of destruction and hyper-politicising building bye laws (again) masked in good intent of creating better cities and more liveable urban landscapes. As the bulldozer – a piece of construction machinery – gains new meanings of exclusively brute punitive destruction, building regulations become the pathways of meeting the ends of an authoritarian politics of hatred and punishment.

In Assam, we see how new laws are created through the dominance of political rhetoric over legal ethics and truth. We see a law against 'land jihad' undergoing its genesis, and law-making being relegated exclusively to the domain of political rhetoric that allows it to be divorced from truth, morality, or public welfare. Here, Arendt's emphasis on the balance between law's relationship with facts and its nourishment in the public realm with active political participation achieved through the cultivation of a 'space of appearance' is noteworthy.

We observe Arendtian blanket clauses, such as public safety, being used to infringe upon the basic rights of minorities in the Gorakhpur eviction attempts, and the same clauses being used to replace facts and reason in the Disturbed Areas Act with Islamophobic rhetoric. In all three cases, the state's actions infringe on the constitutional right to possess private property, yet are still within the legal framework, pitting law against law; the state restricts or penalises voluntary trade, pitting morality against law,

and communal propaganda – e.g., the conspiracy theory of 'land jihad' – serves as its justification, pitting truth against law.

We have examined the emergence of these laws – established in Gujarat, misused in Delhi and Uttar Pradesh, and just beginning in Assam – to understand how they contribute to a more divided cities, thus reinforcing authoritarian rule in a reinforcing cycle. Most significantly, we theorise a cycle of ghettoisation where ghettoisation is not a direct consequence of physical violence, but a result of politico-legal processes, and specifically the dialectical pathologies of bureaucratic depoliticisation of law on the one hand and hyper-politicised legal dog-whistles on the other. The dialectic relationship between both legal pathologies, we argue, sustains, reinforces and cements Muslims' relegation to ghettoised spaces in contemporary urban India.

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