Race-making, religion and rights in the post-colony: unmasking the pathogen in assembling a Hindu nation

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Abstract

This paper intervenes in critical socio-legal/post-colonial scholarship on human rights directed at how religion is constitutive of race and shapes who and what is regarded as 'human' and entitled to rights. It focuses on the Indian post-colony and legal persecution of the Tablighi Jamaat, a global, quietest Islamic movement, by the Hindu Right government during the Covid pandemic. It analyses how religion structures race in Hindu nationalist discourse to transform the Muslim into a perpetual outsider and an existential and epistemic threat to the Hindu nation and rights of the Hindu racial majority. The discussion connects to the epistemic anxiety generated by the alternative worldviews presented by this racialised 'Other' that shape legal consciousness and rights interventions globally. In complicating how anti-Muslim racism and Islamophobia are integral to the transnational histories of race and race-making, the analysis triggers a rethinking of human rights interventions and the epistemological closures they enact.

Keywords: human rights; critical socio-legal/post-colonial theory; race; religion and rights; anti-Muslim racism/Islamophobia; Covid; Hindu nationalism; Tablighi Jamaat

1 Introduction

From 10 to 15 March 2020, thousands of members of the Tablighi Jamaat (TJ), drawn from around the globe, congregated at an event held at the Nizamuddin Markaz mosque in New Delhi. The organisers had secured official permission to hold the event. As the event wound down, the Delhi government announced that public gatherings would be confined to no more than fifty people, due to the threat posed by the emerging COVID-19 pandemic. A few days later, on 22 March, the government imposed a national lockdown with only four hours' notice prior to implementation and with the suspension of all international flights. Over 1,000 TJ participants, comprising Indian citizens and foreign visitors, were left stranded at the Markaz with nowhere else to go.

The TJ is a quietest, Islamic reform movement that emerged in colonial India in the 1920s (Chakrabarti, 2018, pp. 135–155; Ingram, 2018; Metcalf, 2004, pp. 272–275). It views the nation state as the epitome of modern civilisation, which it conceives as based on division and focused on material development to the exclusion of spiritual development. The movement calls on Muslims to turn towards a more disciplined life, which involves both withdrawal from conflict, as well as cultivating moral qualities and self-sacrifice (Metcalf, 2003, pp. 139–145). The TJ has no formal organisation, paid staff or membership list, and fosters a sense of community through the holding of periodic convocations in different parts of the globe. While these features and its itinerant existence have kept the movement largely outside of the public gaze, the broad appeal of its alternative understanding on how to live and be in the world has made the TJ one of the largest Muslim movements in the world.

Immediately after the declaration of the lockdown, panic erupted when some of the TJ congregants tested positive for COVID-19, including those who had returned to their homes in towns and villages

across India. This marks the point at which the Hindu nationalist government began a campaign of intimidation and persecution against the TJ members, principally by attributing the national spread of the virus to them (Bajoria, 2020; Gettleman *et al.*, 2020). Fear and hysteria concerning the pandemic were inflamed by the broad circulation of terms, such as 'Corona jihad (revolution)' and 'Tablighi virus', in the print and visual media to promote the idea that the virus had been spread intentionally. Until the Covid lockdown, public awareness of the TJ's existence was limited, partly because of its quietist pursuits and apolitical agenda. After the lockdown, the TJ was catapulted into the public space as a viral threat, characterised as reckless and irresponsible, and deemed the central trigger for the spread of the virus.

Drawing upon the extensive critical socio-legal and post-colonial human rights scholarship directed at how the idea of race, and racial formations, produced partly in the nineteenth-century colonial encounter have operated to construct the rights-entitled subject, I investigate how this transformation of the TJ from a quietist to a dangerous, threatening and disentitled subject emerges. This scholarship moves beyond the Black/White, West/rest divides and assignations of colour, though it interacts with these. I address how religion is constitutive of the dynamics of race and shapes the legal subject and human rights in majoritarian terms. Such dynamics structure the hierarchy of the subject and who and what is regarded as 'human' and eligible for rights. This hierarchy justifies the use of unrestrained violence against those regarded as non-human or lesser human, and hence non-deserving of rights.

The Hindu Right's nationalist and ideological project of assembling India as a Hindu nation is built along assertions of Hindus as a superior race and the casting of the religious 'Other' as dangerous or threatening to the rights of the racial majority. I trace the ways in which the Muslim as a racialised 'Other' is rendered non-deserving of rights and humanity because of the threat ostensibly posed to the rights of the Hindu racial majority. In the process, anti-Muslim racism emerges in Hindu nationalist discourse to construct the legitimate (Hindu) subject – the one entitled to rights and rights protection. Situating the persecution and prosecution of the TJ within this framing not only reinforces the religious majoritarianism of the Hindu Right, but also reinforces their claim to racial supremacy through racial othering. My argument delves into the deeper epistemic anxiety and hostility generated by the alternative worldviews and ways of living and knowing presented by this racialised 'Other'. This anxiety both draws upon and reinforces Islamophobia and anti-Muslim racism, which have become global phenomena, and shapes legal consciousness and rights interventions (Choudhury and Beydoun, 2020; Razack, 2022).

This paper is divided into six sections. In the second section, I briefly set out the general theoretical discussion within critical socio-legal and post-colonial scholarship of the relationship between human rights and race-making. In the third section, I examine how religion is integral to understanding racial formations in law. I investigate the relevance of this understanding in the context of the Indian post-colony, focusing on the Hindu nationalists' racial agenda in relation to Muslims. The fourth section analyses the role of law and rights in advancing the Hindu Right's racialised agenda, using the example of its persecution of the TJ. In the fifth section, I explain how fear of the TJ's alternative epistemic worldview, conceptions of the subject and ways of living and being drive the Hindu Right's ongoing persecution of the TJ's members and connect it to the ongoing anti-Muslim racism that remains prevalent in the global context. In concluding, the final section indicates the relevance of this intervention on race-making in the post-colony for human rights movements on race and racial justice transnationally.

2 Rights, race and religion: situating the argument

There is an extensive body of critical socio-legal and post-colonial scholarship on the substantial political effects of human rights discourse that undermines the claims to universality, progress and equal freedom to all demographics that rights purport to serve (Otto, 1997; Asad, 2000; Chandler, 2002; Douzinas, 2000; Roth, 2008; Marks, 2008; Hassan and Hammond, 2011; Kennedy, 2012, p. 119; Chimni, 2017, pp. 534–543). This scholarship establishes how human rights operate as a constituting

discourse that can produce outcomes that are not necessarily either progressive or liberating, thus problematising the persistent faith in their emancipatory possibilities (Brown, 2002; Golder, 2014; Kapur, 2018, pp. 151–172). It speaks to the epistemic violence inherent in human rights in which the 'human' is constituted by the axis of inclusion and exclusion established against a host of criteria, including race, religion, gender and class. In this schema, universality and inclusion are equated with the rational, thinking subject and exclude that which is perceived as irrational, insane, primitive or menacing and lies beyond Europe (Fitzpatrick, 1989; see generally Mehta, 1999, pp. 46–51; Losurdo, 2011; Mbembe, 2017, p. 10).

The existing scholarship specifically addresses the embattled global histories of race, their complexity and contradiction, and how they do not offer a clear and linear script on overcoming racial discrimination and subordination (Stoler, 2016, pp. 237–239). Instead, the contested nature of these histories attests to the plasticity and fluidity of race and how it becomes sedimented within categories of law, amongst other sites, that are fixed and treated as real. Law is shaped by racism and 'proves to be compatible with racism' (Fitzpatrick, 1987, p. 122). Race is more than a biological and ontological category, and racism is more than a question of behaviour that can be corrected or reformed over time. The critiques question the predominant assumption informing social justice and human rights interventions that recognition and inclusion of the disempowered and disenfranchised, or the prejudice approach, are the antidote to legal and social inequality (see e.g. Gordon, 2000; Thomas, 2000; Carbado, 2005; Kapur, 2007; Achiume and Carbado, 2021; Desautel, 2021; see generally Da Silva and Harris, 2018). The existing human rights dispensation – already historically infected with anti-Blackness or Islamophobia – cannot produce justice, liberation, recognition or freedom (on anti-Blackness, see e.g. Hartman, 1997; Kostal, 2008; Sexton, 2016; Warren, 2018; Nash, 2019; Wilderson, 2020; on Islamophobia, see e.g. Sayyid, 2014; Hafez, 2018, pp. 216–221; Goodwin, 2020). Instead, the proclaimed building blocks of human rights, namely universality, progress and liberal individualism, occlude the historical and political formations of race in law, and the role of rights in constructing and reproducing racial categories and a hierarchy of humans. This structuring embodies the potential to authorise injustice and violence in and through rights and law (Foucault, 1977; Fitzpatrick, 1989; Asad, 2003; Darian-Smith, 2010, p. 15; Golder, 2015). These critiques foreground the racial logics that underpin international law and human rights, and justify the violent and coercive governance of the colonised or enslaved racial 'Other' (Mutua, 2000; Anghie *et al.*, 2003; Anghie, 2004; Hunt, 2007; Grandin, 2015; Nesiah, 2020).

Building on these critical insights, law and society scholars have traced the work that law and rights do in relation to race and religion (Darian-Smith, 2010; Massoud and Moore, 2020; Aziz, 2021). For example, Darian-Smith maps out the imperialistic and xenophobic legacies that inform ideas of race and religion in landmark cases in Anglo-American law. She demonstrates how race and religion, while analytically distinct categories, are imbricated with one another and repeatedly produce exclusions of persons from law and legal entitlements. These exclusions are integral to the international legal order and human rights, which are structured by the legacies of the colonial encounter and slave trade (Douzinas, 2007; Nesbitt, 2008; Barreto, 2013; Knox, 2016). 'Juridical truths' about race and religion, produced in the context of the legal regulation of the slave trade or colonialism, have operated along this axis of inclusion and exclusion, the assimilable and inassimilable, and believers and heathens. These truths continue to linger in the post-colonial present (Mawani, 2010). They are evident in the complex web of citizenship, immigration and migration laws that continue to categorise and hierarchise people according to varying levels of 'humanness' (Razack, 2008; El-Enany, 2020). Race and religion delineate and reify a specific meaning of 'human', in addition to determining the extent to which rights can be bestowed upon or denied to different classes of humans (Mbembe, 2017, pp. 35, 95–96).

Justifying the denial or suspension of rights to those who fail to conform, or are constituted as embodying danger and violence, is explicitly evident in the anti-Muslim racism and global targeting of Islam in the post-9/11 era. Such targeting has been overt in the pursuit of the 'War on Terror', establishment of the Guantanamo Bay detention camp and the legally sanctioned, as well as legally suspect,

military operations and pre-emptive strikes in Afghanistan, Iraq and Syria. Human rights groups, including women's rights advocates, have implicitly supported military interventions in the name of counter-terrorism to ostensibly support lesbian, gay, bisexual and transgendered (LGBT) and women's rights in Syria and Afghanistan, respectively, and celebrated the upholding of Islamic veil bans by the European Court of Human Rights. Such interventions reinforce and perpetuate two pervasive racist tropes directed at Islam and Muslims. The first is Islam as fundamentalist and the second is Muslim women as victims of a savage culture and men, to be rescued by the liberal White saviour (Mutua, 2001; Abu-Lughod, 2013; Hirschkind and Mahmood, 2002; Mahmood, 2011b, pp. 78–79). Constructing a threatening or dangerous 'Other' through racism and the association of Islam with terror has encouraged the rapid development of international and domestic legal surveillance mechanisms in which human rights remain implicated.

2.1 Problematising race in the post-colony

The idea of race and racial formations emerged within sociojuridical discourses, partly, though not exclusively, in the context of the nineteenth-century colonial encounter and the slave trade. These discourses consolidated centuries of violence and knowledge processes that produced the idea of 'race' as linked to the logics of biology based on inferiority and superiority, objectification and subjectification. They denied 'the native' the ability to exist as a complete human and transformed them into lesser humans or expendable cargo. This process manifested in the relationship of racial subjugation and objectification, and promoted White racial subjectification and civilisational supremacy.

Franz Fanon elaborated on the idea of race within the colonial context as a technique for constituting Blackness and Whiteness; and for designating certain bodies and lives that are White as entitled and deserving, and those that are Black as not. The Black body was interpellated as a racialised, sexualised object and expected to behave as a 'being for others' (Fanon, 1986 [1952], p. 109). The colonised non-White body emerges somewhat contradictorily as inherently violent and threatening, and lacking subjectivity (for a more elaborate discussion, see Kapur, 2021); in neither case does this subject fully enjoy their humanity. Fanon states that '[t]here is of course the moment of "being for others" … but every ontology is made unattainable in a colonized and civilized society …. The black man has no ontological resistance in the eyes of the white man' (Fanon, 1986 [1952], pp. 109, 110). The racialised 'Other' was rendered precarious and inferior. Their subjectivity was calibrated against a civilisational discourse that represented the racial 'Other' as lacking any rational capacities, in combination with the imperatives of the institution of slavery and demand for cheap exploitable labour. These imperatives restricted the scope of humanness and the terms of recognition ascribed to the racialised 'Other' in law; they were dissolved into non-humans, objects or merchandise (Mbembe, 2017, p. 11). The idea of the non-White as non-human or inhuman sedimented into common-sense thinking, naturalising and normalising the relationships of domination and subordination, and gradually fixing the idea of race as immutable and thing-ified (Césaire, 1972, p. 6, equating colonisation with 'thing-ification'). The process of objectification facilitates the establishment or fixing of essentialist stereotypes, in relation to which the Black/colonised subject is assumed to embody a set of essentialised traits and predetermined characteristics; they are unable to generate their own meaning, but arrive within a predetermined meaning.

Colonial racism was reinforced by the role of nineteenth-century socioscientific discourse that mapped racial difference, including bodily traits, onto global and social spaces. It established racial categories in which the Black man and the White man emerged 'as signifiers of an irreducible difference' and also indicated which regions and humans fell within the domain of universal justice (Da Silva, 2007, p. 94). Those categories served to keep the non-European outside of modernity's orbit and demonstrated how the subject of ethical life or the self-determined transparent 'I' was produced – and the human and humanity shaped – in the form of the White European 'man' (Da Silva, 2007, pp. 68–91). Racial differences continue to be conceived as violent, nothing or inhuman, rather than simply excluded from law and rights. This racial grid structures modern configurations of the subject in law and informs the global legal order, including, as already discussed, human rights.

2.2 Epistemic violence and racial othering

The deeply embedded process of racialisation cannot be remedied through the embrace of liberal values and rights that, at the moment of decolonisation, Europe peddled as the natural direction of freed states and people (Fanon, 1963 [1961], p. 43; 1986 [1952], p. 226). Such a prescription posits an epistemological subject that is normalised and naturalised. It forecloses any interrogation of the epistemic violence produced by a racist philosophy that shapes the rights-bearing subject, alongside the destruction of non-European knowledge systems and alternative visions of living and being in the world.

Spivak has elaborated on how 'epistemic violence' is integral to Western knowledge production (Spivak, 1988). She centres the discursive production of the subaltern, in particular the 'Third-World woman', who is silenced and represented as supine, inescapably oppressed, victimised and an essentialised 'Other' in Western academic and activist discourses. These efforts reproduce the Orientalism and superiority of the West's elites over the perceived primitivism of the non-West, and amongst other things, reinscribe the superiority of Western knowledge. Through her epistemological understanding of the subaltern subject, Spivak raises the concern that the subaltern could never speak or be known on her own terms. In her analysis, the subaltern is not an identitarian category, but serves as a device for tracing the mechanisms by which the masculine imperialist mission ruthlessly displaces the 'Other', the unfamiliar or difference; and in the process, a binary construction of First-World and Third-World woman and the redemptive, benevolent White saviour is inaugurated (Mohanty, 1991; Gandhi, 1998). This analysis anticipates the construction of Muslim women as in need of rescue from Muslim men, which has been a patent feature of rights advocacy in the post-9/11 era (Abu-Lughod, 2013).

The complex relationship between race, racial formations and epistemic violence has been further developed in decolonial Latin American scholarship that maps how race emerged in the colonisation of the Americas from the fifteenth century (Mignolo, 2002; Quijano, 2007; Lugones, 2010). This scholarship develops the concept of coloniality that is connected to epistemology and ways of thinking, knowing and living.[1] Racism is marked out as a preceding condition of colonisation and understood as a temporal marker that does not terminate with the end of colonisation. Quijano highlights how the historical production of race, based on the binaries of superiority and inferiority, rational and irrational, primitive and civilised, and established through domination is obscured by the fiction of human relations and humanity, as understood in biological terms. The matrix of capitalism, racial hierarchies and racist epistemologies that contour coloniality shapes and facilitates modernity and human rights, enabling the extinguishment or non-recognition of some humans as humans. This matrix continues to sustain a knowledge system developed with Europeans in mind – Eurocentrism – that produces categories of race and justifies racism as a scientific fact (Quijano, 2007, pp. 171–174; Mignolo, 2002, p. 49; see also Lugones, 2010, on how race, gender and sex are/ were implemented through a modern/colonial gender system; Mendoza, 2016, p. 100; Hussein and Hussain, 2019).

These critiques should not be read as simplistic calls to privilege, recuperate and restore subjugated knowledge systems, which would only serve to reify and essentialise the histories and locations of the 'Other' (Madhok, 2021, p. 173). It is to understand epistemic violence as connected to the power to deny subalterns subjectivity and the status of knowers. Problematising the relationship between race and epistemic violence through the legacies of the colonial encounter does more than just delimit the reach of law and humanity or serve as an oppositional consciousness. It emphasises how the production of the legitimate self-possessing, rights-bearing individual sustains the continuities between subjugation and freedom. The idea of race as a scientific biological fact and a normative belief endures, obscuring the global histories that have constituted race, racial categories and difference in the interests

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[1]This intellectual project works alongside, rather than in opposition to, post-colonial critiques, cultural studies and Marxist analysis. As Mignolo states, the differences lie 'in the genealogy of thoughts that anchor and nourish each project' (Mignolo, 2009b, p. 16).

of (White) racial power. These legacies configure the legal racial apartheid that shapes notions of equality, justice and rights. The racialised 'I' that emerges from the epistemic violence of imperialist and European subject-constitution plays a central role in producing the modern ethically privileged subject and the notion of the human. This analysis is significant for a discussion on how race emerges within the context of the post-colony – quite specifically, in the contemporary discourse of the Hindu Right and its commitment to establishing India as a Hindu nation for the Hindu race.

3 Race and the Hindu nation

Discussion on the work that race does in colonial governance provides the backdrop for analysing how religion becomes an integral feature of race and its functioning in the post-colony – specifically in the response of Hindu nationalism to the Muslim and Islam in post-colonial India. Post-colonial and critical scholarship on race-making in India has largely focused on either the experience of abjection and subjection of the native subject by the colonial power in the context of the colonial encounter; or the exploitation, subjugation and dehumanisation of lower-caste groups (Dalits) by upper-caste groups (Brahmins) in the *longue durée* of caste hierarchy on the Asian subcontinent, including addressing caste as a racial category (Rao, 2009; Dhanda, 2015). In this section, my intervention historicises how the dynamics of religion and race operate within the discourse of the Hindu Right to establish the Hindu Right's majoritarian and supremacist vision of Indians as a Hindu race, India as a Hindu nation and Muslims as a violent and dangerous existential and epistemic threat.

Islamophobia, operating at a global level especially since the 9/11 attacks on America, provides the contemporary context within which Muslims are treated and constructed in law – that is, within anti-terror, security, and law and order discourse and citizenship registries (Ayoub, 2020). However, this insight is not adequate for explaining the historically specific ways in which the dynamics of race and religion play out in the post-colony (on race and Islamophobia, see e.g. Allen, 2010; Esposito and Kalin, 2011; Medovi, 2012; Abbas, 2019, pp. 57–70; Aziz, 2021; 2022; on the role of homonationalism in shaping Islamophobia, see Puar, 2007).[2] These dynamics are exemplified in the Hindu Right's nationalist project. A central feature of this project is the racial subjectification of the Hindu as integral to national identity and the racial objectification of Muslims as embodying an interminable, existential and epistemic threat to this identity. Tracing the work that race does in advancing this project offers two important insights. First, it provides a critical and contextual lens for explaining how racial dominance and supremacy are established using religion in the post-colony. The undisclosed and legitimate subject of law in the post-colonial present – the transparent 'I' – is the Hindu, with the Muslim rendered illegible or outside the scope of legitimate subjectivity and thus a perennial outsider. Second, it dissects the epistemological significance and implications of these race-making practices, exposing how the epistemic challenge posed by the Muslim 'Other' is generative of the deep fear and anxiety that shape the racialising nationalist project and legal responses.

Religion is an important marker of difference between Hindus and Muslims in the discourse of the Hindu Right. I elaborate on how religion is used to manufacture the idea of a 'Hindu race', born of an amalgam between colonial racism, discussed earlier, and the pre-colonial idea of a Brahmanical notion of Aryanism (van der Veer, 1999, pp. 424–425). Aryan race theory is based partly on the idea of Indo-European racial unity that is used to advance Hindu (specifically upper-caste Brahmin) and White nationalist projects (Ashutosh, 2022, pp. 326–329). At the same time, in the discourse of the Hindu Right, Hinduism is presented as the national religion of India that needs to be defended against the existential threat allegedly posed by both Islam and Christianity. Reasserting their status as a martial race includes reviving the perceived superiority and glory of the Hindu religion through the return to a 'pristine Hinduism', based on ancient texts, and spreading the Hindu civilising mission to the rest

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[2]There is a vast literature on the concept of Islamophobia and its complicated relationship with race and racialisation. Much of the focus is on multiculturalism and pluralism within the Euro-Atlantic context, as well as the impact of the War on Terror in the post-9/11 era on Muslims within this context, rather than the post-colony.

of humanity (van der Veer, 1999, p. 426; Patil, 2017). In this way, the concept of a 'Hindu race' is ideologically, historically and discursively constructed.

The material basis for the emergence of a Hindu 'I' – specifically the role of race – is established in three distinct ways in the discourse of the Hindu Right's ideologues: first, through their racialised conception of the Indian nation as a Hindu nation that belongs to the Hindu race; second, through their demand that Muslims assimilate into the master race in order to belong, at the cost of their own racial and cultural obliteration; third, and somewhat contradictorily, through their perception of the Muslim as an inherently dangerous, violent and threatening alien presence, incapable of assimilating and therefore to be eliminated or expunged from the body politic.

3.1 Hindu race and Hindutva

The punitive response by the Indian government towards the TJ, in the context of the pandemic, unfolded within the broader anti-Muslim Hindu nationalist agenda of the Hindu Right, which seeks to establish India as a Hindu state and articulate Hindu religious identity partly as a racial identity (Savarkar, 1949 [1929]; Ghoshal, 2020; for discussion of the Hindu Right's nationalist project, see Thapar *et al.*, 2016; see more generally Chatterji *et al.*, 2019). The compositionality of Hindus as a race consists of an 'upper-caste' or Brahmanical racism and exposure to European ideas about race in the colonial and fascist period (Pandey, 1993; Jaffrelot, 2015). Claims regarding the superiority of the Hindu race appear in political and academic writings on nationalism (see e.g. Sarda, 1906; see also Tilak, 1925, endorsing the idea of a Hindu–Aryan race from which most civilisations originated; Mukerji, 1929 [1909]). Nationalism and religion are both deployed to develop the idea of a civilisationally superior Hindu race, ideologically constructed through a common origin, common blood, common lineage and notions of purity. This idea has merged with colonial racism, discussed earlier, articulated and advanced through the civilising mission of Empire. Colonial racism was structured against a racial hierarchy, according to which race was presented as biologically and ontologically determined.

At the same time, race in Hindu nationalist discourse was distinct, and partly a reaction to the threat ostensibly posed to the Hindu majority by Western Christian missionaries, the British colonial power and Muslim minorities. In 1925, the movement coalesced as the Rashtriya Swayamasewak Sangh (RSS) (National Volunteer Corps) – a Hindu nationalist organisation that propagated its idea of India as a Hindu *rashtra* (state) through the ideology of *Hindutva* (Jaffrelot, 1996; 2007). Ever since 2014, when the Bhartiya Janata Party (BJP) (Indian Peoples Party), which forms the political arm of the Hindu Right, led by Narendra Modi (the current prime minister), was elected to power, the ideological agenda of the RSS has spread precipitously (Jaffrelot, 2021). Modi has been a permanent member of the RSS since the late 1960s and rapidly rose through the ranks of the organisation. During his tenure, the ideological influence of the RSS on the government has become firmly entrenched, manifested in the rewriting of school textbooks for the national educational curriculum; increased control over the print and visual media; and weaponising law against Muslims and other minorities, who are Indian citizens, to promote both assimilationist policies and security and anti-terror legislation.

Hindutva is associated with the political philosophy of Vir Damodar Savarkar and Madhav Sadashiv Golwalkar, two early twentieth-century RSS thinkers who shaped the political agenda of the Hindu Right and its racial project. The terms 'Hindu rashtra' and 'Hindutva' appeared, initially, to have no communal overtones, serving mainly as a strategy of resistance to British colonial rule and cultural domination; however, in the 1930s and 1940s, the writings of Savarkar and Golwalkar sought to establish a Hindu rashtra that would subjugate all non-Hindus to a 'master' race. Savarkar, an upper-caste Brahmin, was one of the most influential early exponents of this ideology. His writings on Hindutva continue to represent the ideological foundations of the contemporary Hindu Right. In his 1923 seminal essay, 'Essentials of Hindutva', he unhesitatingly equated Hindu nationalism with White nationalism (Savarkar, 1923). Race is invoked by Savarkar to provide an

original unity to the cultural diversity of Hindus: 'And no word can give full expression to this racial unity of our people as the epithet Hindu does. Some of us were Aryans and some Anayrans [non-Aryans] … but, we were all Hindus and own a common blood' (Savarkar, 1949 [1929], p. 100).

Savarkar's ideas of blood and race were partly influenced by European fascism and included Hitler's view of Aryans as a master race that had conquered Europe. The link between blood and race is also implicit in his views on Blacks in America. He argued that Muslims in India, which was to be secured for Hindus, would be treated the same as 'negroes' in America.

Savarkar's writings drawing upon White nationalist claims of racial superiority should not be equated with aspirations to whiteness or Europeanness. Rather, Savarkar locates race geographically in the sub-continent and as indissociable from ancient Vedic India. The objective is to create not an exclusive Aryan race, but a Hindu unity that partly uses the idea of spirituality to demonstrate Hindu superiority over both the British (Christian) coloniser and the Muslim Other (van der Veer, 1999, p. 429). In Savarkar's writings, Hindutva is distinct from Hinduism and embraces 'all the departments of thought and activity of the whole being of our Hindu race' (Savarkar, 1949 [1929], pp. 3–4). Hindutva was a means for establishing the superiority of the Hindu race, rather than the religion. According to Savarkar:

> 'Hindus … are united not only by the bonds of love they bear to a common motherland, but also by the bonds of a common blood … all Hindus claim to have in their veins the blood of the mighty race incorporated with and descended from the Vedic forefathers.' (Savarkar, 1949 [1929], p. 68)

In this definition, race is blood and blood is the marker of commonality. The Hindu is cast in racial terms and, by definition, follows a particular religion. The Hindu is also one whose fatherland and holy land correspond. Through this elision, Savarkar formulated a political category of the Hindu in opposition to non-Hindus, particularly Muslims and Christians (Savarkar, 1949 [1929], p. 92). The idea of Hindus as being constituted in opposition to Muslims and Christians whose holy lands are outside of India meant that their very presence and identity posed a continuous threat to the Hindu nation. The RSS has carried forward this racist militancy into its ultra-nationalist, anti-Muslim discourse. The idea of foreignness and a continuous conflict between Hindus and Muslims/Others, which was central to Savarkar's position, continues to inform the contemporary phase of Hindu nationalism.[3]

3.2 Assimilation and racial obliteration

The RSS extended its influence more broadly under the leadership of its second chief, M.S. Golwalkar, who headed the organisation from 1942 to 1973. Consistently with most subsequent leaders of the RSS and other Hindu parties, Golwalkar was an upper-caste Hindu Brahmin and, like Savarkar, he believed in the superiority of the Aryan race. He supported Hitler's project to exterminate the Jews, while also supporting Zionism, the establishment of the State of Israel and Israel's anti-Arab/Muslim stance in the Middle East. Drawing inspiration from the Nazi model, he argued for the imperativeness of preserving racial purity by insisting that Muslims and Christians only be allowed to remain in the country if they abandoned their differences and merged with the 'National Race'. He stated that:

> 'To keep the purity of the Race and its culture, Germany shocked the world by her purging the country of the Semitic Races – the Jews. Race pride at its highest has been manifested here. Germany has also shown how well-nigh impossible it is for Races and cultures, having differences going to the root, to be assimilated into one united whole, a good lesson for us in Hindustan to learn and profit by.' (Golwalkar, 1939, p. 35)

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[3]In Savarkar's words: 'In this prolonged furious conflict our people became intensely conscious of ourselves as Hindus and were welded into a nation to an extent unknown in our history' (Savarkar, 1949 [1929], p. 45).

At the same time, race is not strictly biologically determined, but constructed in social and cultural terms (Jaffrelot, 2015, p. 340, discussing the notion of social racism). Golwalkar's definition of a Hindu nation includes five components: geographical, racial, religious, cultural and linguistic (Golwalkar, 1939, p. 18). He argues that Hindus qualify under each of these components and thus constitute a Hindu nation. For Golwalkar, the appeal to religion is indistinguishable from race and the two terms are used interchangeably and synonymously. Those not part of the Hindu race – the Muslims and Christians, considered 'foreign races' – have an opportunity to be part of the Hindu nation if they fully assimilate. Assimilation requires that they meet specific conditions:

> 'All those … can have no place in the national life, unless they abandon their differences, adopt the religion, culture and language of the Nation and completely merged themselves in the National Race. So long, however, as they maintain their racial, religious and cultural differences, they cannot but be only foreigners, who may be either friendly or inimical to the nation.' (Golwalkar, 1939, p. 45)

He continues: '[I]n one word they must cease to be foreigners, or may stay in the country, wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment – not even citizen rights' (Golwalkar, 1939, pp. 47–48; see also Golwalkar, 1966).

Golwalkar is presented as a central figure in expounding the ideological doctrine of the Hindu Right. The RSS promotes his views in its global outreach to the Indian diaspora to elicit their support for Hindutva and Hindu nationalism. The RSS expanded its presence in the US exponentially throughout the 1990s (Rajagopal, 2000). The Hindu Swayamasewak Sangh (Hindu Voluntary Organisation) (HSS) is the US arm of the RSS and the key spokesperson for the Indian diaspora (see About Us, 2020; see also JM, 2014).[4] It has developed a strategic politics on race that both supports the concerns of the Hindu diaspora while also remaining consistent with Golwalkar's racial ideology of India as a Hindu nation and Hindus as a race. For example, at the height of the Black Lives Matter (BLM) movement in the US, in the summer of 2020, the HSS expressed their shock at the killings of George Floyd and other Black men, proffering solidarity with their African-American brothers and sisters in demanding justice for Floyd and reform of the justice system. They stated: 'History tells the tragic tale of racial injustice and selective enforcement of law in this country for too long. Thus we stand against racism and discrimination' (Hindu Swayamsevak Sangh USA, 2020).

In stark contrast, the HSS has consistently expressed full support for the BJP and its anti-Muslim rhetoric in the context of its persecution of the TJ for spreading the virus. The support for the broader racial and Hindu supremacist project of the Hindu Right is made explicit in its praise and recognition of Golwalkar and his commitment to the concept of a Hindu nation, Hindu resurgence and a Hindu nationalist ideology (Guruji Golwalkar, 2021; see also Press Release, 2017). The Hindu Right's support for BLM through its diasporic satellites was an alliance forged along the colour line, without compromising its conception of the Hindu race within its nationalist project, and as articulated by Golwalkar.

In the writings of the Hindu Right ideologues, the political category of Hindu has been placed in opposition to religious minorities and premised on the elimination of these minorities, by either cultural erasure through assimilation or considerably more violent means. Fundamentally, the 'Hindu' is an attitude of allegiance. The appeal for a Hindu nation is thus essentially an expression of enmity to religious minorities. It is based on the construction of the racial 'Other' as dangerous and as threatening the very existence of the Hindu racial majority.

4 The role of law and the Muslim as an existential threat

The role of law is central to advancing the Hindu nationalist project. Under the guise of equality and liberal humanism, legal discourse constructs those who are legitimate and belong to the nation state and those who do not (see e.g. Cossman and Kapur, 2001; Saxena, 2018; Kapur, 2020). Law is

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[4]The Hindu Swayamsevak Sangh identifies as a 'voluntary, non-profit, social and cultural organization'.

implicated in producing the nation, while presenting itself as both self-contained and self-producing (for a more elaborate discussion, see Fitzpatrick, 1995, p. xiii). It continues to perpetuate the racist ideologies of the colonial period, although it emerges in a distinct form – the primacy of the Hindu over the White European man – in which the cultural project becomes a cipher for race and the colonial hierarchies on which it is based. The racial hierarchies that constitute the subject of law continue to inform the Hindu nationalist project and Hindu racial supremacy in relation to which the Muslim is posited as a central threat to be contained, evicted or eliminated. These hierarchies are explicit in the context of the Hindu Right's targeting of the TJ during the initial phase of the Covid pandemic.

4.1 The pathogen and the TJ

The Hindu Right used the situation of the pandemic to build on its anti-Muslim agenda. Prior to the COVID-19 pandemic and national lockdown, large-scale student-led protests were active around the country in response to legal measures introduced by the BJP to relegate Muslims in India to the status of second-class citizens. The pathogen provided the government with a pretext upon which to bring a halt to the protests, as well as an opportunity to aggressively pursue its Hindu nationalist agenda.[5] Its response to the TJ forms part of this agenda and draws heavily upon the ideological legacy of its leaders.

In the immediate aftermath of the TJ congregation at the Markaz, they were promptly labelled by the BJP and the media as having engaged in 'corona jihad' and the TJ congregants were accused of being 'super spreaders'. Their gathering was singled out as exclusively responsible for the exponential spread of the virus nationally, despite the fact that several non-Muslim religious gatherings were also taking place around the country (Jain, 2020).[6] Furthermore, the *Organiser*, a newspaper that serves as the English-language mouthpiece of the RSS, declared that the TJ had intentionally spread the virus 'with the notorious agenda of infecting and killing hundreds and millions of Hindus' (*The Organiser*, 2020). Thus, within a short period, the pathogen was unmasked – it had a face, and public fear had a target.

The congregants were branded as conspirators and terrorists who must be punished for attempting to intentionally spread the virus to destroy Indian civilisation – that is, equated with the supremacy of the Hindu race and Hindu religion. These attacks were accompanied by calls to prosecute the TJ under the National Security Act, 1980 (NSA) as traitors. This characterisation is conflated with all Muslims and the suggestion that they are collectively intent on the destruction of the dominant Hindu race and Hindu nation. The recourse to language of uncivilised behaviour and the potential threat to legal and national order is reminiscent of the savage/civilisational distinction that underpinned the colonial legal order and its dependence upon an 'Other'. This 'Other' continues to reside within the space of the nation but remains as both alien and outside the national order (Fitzpatrick, 1995, pp. xv–xvii).

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[5]The BJP enacted the Citizenship (Amendment) Act in 2019 to provide an easier path to Indian citizenship for migrants of all faiths from neighbouring countries except Muslims. In effect, for the first time, the law establishes religion as a criterion for citizenship. The Act has been challenged on the grounds that it violates the right to equality under Art. 14 of the Indian Constitution, is arbitrary and privileges religious persecution over other forms of persecution in claims for citizenship. In addition, the government proposes to implement the National Register of Citizens (NRC), which was created by the 2003 amendment of the Citizenship Act, 1955, to document all legal citizens in India. The central concern of those opposing this implementation is that the NRC will be used to target Indian Muslims and result in their statelessness. For a discussion of how nationalism was deployed against the protesters in support of the national lockdown, see Rao (2020).

[6]There were some well-publicised non-Muslim events taking place at the same time that were larger and not similarly targeted; for example, the daily footfall of Hindu pilgrims at the Tirupati shrine in south India numbered between 61,000 and nearly 80,000 people (see *TTD.News*, 2020). Similarly, large crowds gathered to celebrate the Hindu festival of Rangpanchami (Holi) on 13–14 (*The Times of India*, 2020). During the brutal second wave of the pandemic in April 2021, millions of Hindu pilgrims were permitted to gather on the banks of the Ganga river in Haridwar, a town in the northern state of Uttar Pradesh, during the Kumbh Mela (festival), in complete violation of the pandemic rules. At the same time, the government opposed an application in March 2021 to reopen the Markaz mosque and allow up to 200 worshippers into the premises during the holy month of Ramadan, citing the threat of the second wave of the pandemic.

More specifically, the rational legal subject needs, and is defined by, the domain of savagery that is equated with unconstrained or undisciplined behaviour (Fitzpatrick, 2001, p. 178).

An immediate response to the TJ episode was the arrest of the sect's leaders who were charged with violating various sections of the Epidemic Diseases Act, 1897, the Disaster Management Act, 2005 and the Foreigners Act, 1946. Subsequently, charges of culpable homicide and manslaughter were added. In addition, hundreds of foreigners, both men and women, were held in quarantine or detention centres around the country for months in appalling conditions, even after having tested negative for the virus (Chishti, 2021). Women congregants from different parts of the world were detained in cramped and inhospitable conditions:

> 'There were language barriers, and all we had was broken Urdu and sign language to communicate …. We managed to wrap a cloth on the camera in the room, which was meant to record us 24/7. The only time we went outside the room was when we went to the washroom to relieve ourselves or to wash clothes, by hand, and dry them in the room itself.' (Chishti, 2021)

One detainee from the UK stated: 'when you are locked away like an animal inside a room and you get treated like a piece of dirt, it mentally just breaks you completely' (Ellis-Petersen, 2020).

In May 2020, the foreign-national TJ followers challenged their prolonged detention in institutional quarantine as illegal, arbitrary and violative of their fundamental rights to equality and life under the Indian Constitution (see e.g. *Mohammad Jamal*, 2020). These legal challenges prompted the police to immediately bring criminal charges against the foreigners for violating their tourist visas by ostensibly proselytising their faith and causing danger to public health and safety. Over 3,500 TJ congregants from forty different countries were blacklisted and their visas cancelled. Most of these foreigners – who were desperate to return home after having been incarcerated in quarantine or detention centres for months – plea bargained their way out of the cases. The plea bargains included agreeing to a ten-year ban on returning to India (John, 2020).

Dozens of others opted to remain in the country to face trial, with a challenge also being filed in the Supreme Court against the arbitrariness of their visa cancellations. Throughout the country, several lower courts granted bail or dismissed criminal cases against the remaining foreign nationals who had been imprisoned or detained in connection with the TJ event.[7] One court suggested that there was a 'smell of malice' in the persecution of the TJ, who had been dehumanised and made into 'scapegoats' (see *Konan Kodio Ganstone*, 2020, at [30]). The Supreme Court ultimately directed that all petitioners be allowed to return home on provision of a bond (*Maulana Ala Hadrami*, 2020).

The outcome of the legal proceedings included the maintenance of a ten-year ban on most foreign TJ participants returning to India. For the remainder, the lower courts remained sympathetic to the plight of the TJ, although the view that the TJ had been reckless and deserved to be reprimanded was implicit.[8] Ultimately, the TJ were either unmasked as the embodiment of the pathogen that had been successfully contained and expelled or infantilised and reprimanded by a paternalistic, finger-wagging judiciary that sought to discipline them into appropriate behaviour. The ambivalence produced by these competing representations affords an opportunity to inquire more deeply into the anxiety that conditioned these responses.

5 Epistemic anxiety and disobedience

The progressive demonisation of the Muslim culminating in the targeting of the TJ is emblematic of the Hindu Right's perseverance in establishing India as a Hindu state. The framing of the TJ in the public imagination as a virulent threat to the Hindu majority acquires traction in a pervasive

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[7]The grounds articulated included the absence of evidence showing the TJ as having engaged in proselytising activities or harming public tranquillity through their acts.

[8]See e.g. in the Madras High Court, *Md Kameual Islam v. The State*, in which the court indicated that if those detained expressed regret for having violated their visa conditions, then the proceedings against them could be concluded.

anti-Muslim, Islamophobic environment that has aggressively re-emerged both nationally, as well as transnationally, since the events of 9/11.

At the same time, the constant need to assert and iterate the idea that India belongs to a Hindu race is indicative of a persistent epistemic anxiety that is never resolved.[9] The Hindu Right is haunted by the continued presence of the racial 'Other' who requires constant monitoring, subordination, exclusion and/or eradication. The presence of the TJ within the Indian polity disputes the idea of the Hindu race's originality or naturalness that the Hindu Right seeks to perpetuate and reiterate. The inability to fully establish the TJ as foreign, the embodiment of the pathogen, and as posing an external threat to the survival of the Hindu nation is reflected in the ambivalent outcome of legal efforts. It is this ambivalence that creates distance between the endeavour to normalise the race as Hindu and the rejection of these efforts by the Muslim, thus providing an opportunity to explore the deeper epistemic anxieties that inform the Hindu Right's race-making agenda.

What is entirely erased from the representation of the TJ as an existential threat to the Hindu race is their philosophical worldview on how to live and be in the world. The movement is apolitical and its epistemological position is committed to internal regeneration and *sukun* (peace), as well as the pursuit of individual ethical perfectibility. The movement has gradually increased in size and popularity due, in part, to its non-militant and itinerant character, and its philosophical focus on piety and inner-worldliness in response to disillusionment with existing structures of government and material pursuits (Ali, 2003; Metcalf, 2004, pp. 274–275).[10] It is the TJ's alternative worldview, and way of being, which resists assimilation and functions as a form of epistemic disobedience that is ultimately generative of the anxiety and fear of the Hindu Right (Mignolo, 2009a; Sayyid, 2014, p. 12).

Despite the TJ's fluid and itinerant existence, a starkly different narrative has emerged in national and transnational political and policy circles. Their distinctiveness and commitment to piousness and liberatory subjectivity are read as an unwillingness to assimilate and are thus transformed into a threatening presence. It is this assessment that is conflated with generalised assumptions about Islam as primitive and illiberal, and as subordinating gender and sexual subgroups. This view shores up the rhetoric of civilisational and racial superiority, not only in (Hindu) India, but also in the (White Christian) West. The TJ is cast as inassimilable and as representing everything that the majority group is not – for example, Indian society read Hindu race; Western society read Western whiteness – and is simply presumed to be inherently violent. In Britain and the US, for example, the TJ's focus on piety and its call on 'wayward Muslims' to return to 'an austere and orthodox Muslim faith' are read as offering a place for the potential recruitment of 'jihadists' (equated with Islamic terrorism or radical extremism) (Alexiev, 2005; Burton and Stewart, 2008). This characterisation, in part, explains the British government's reluctance to intervene on behalf of eight British citizens present at the TJ congregation and subsequently detained; nor did it make any public statements about its citizens. The British government and large parts of the citizenry have had a long-standing problem with the visible and public presence of the TJ in Britain (see Ellis-Petersen, 2020).[11]

The antipathy towards the TJ and the accusations of failing to assimilate are also directed towards their treatment of women and to charges of oppression. Such charges not only assume the exemplary treatment of women in non-Tablighi spaces; they also do not explain the exponential growth in the number of women who are joining and participating in the TJ congregations and the piety movement,

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[9]It is important to note that this anxiety emerges from several quarters, including from the desires of a very large amorphous Indian middle class, which fears an encroachment upon its dominant position by the demands of oppressed and previously marginalised groups seeking recognition and inclusion (Hansen, 1999, pp. 5–10).

[10]For a discussion on cultivating alternative conditions of civility, piety and cohabitation emerging from within the postcolony, see Redding (2018); Hamzić (2019); Khan (2021).

[11]The eight citizens, detained for months and facing criminal charges, subsequently agreed to the Indian government's offer to release and deport them, subject to the conditions that they pled guilty to visa violations and 'wilfully' disobeying lockdown orders, and were also banned from travelling to India for ten years. For a discussion of how the Tablighi Muslims have been pathologised and addressed within the discourses of terrorism, securitisation and citizenship in Britain, see Pieri (2015).

which requires a more complex analysis (Ali, 2011). The Tablighi women pursue interests and desires that cannot be easily reconciled with the values of the European man or the Hindu nationalist. The idea that they are participants in the making and enactment of piety that is part of Islamic revivalism's response to the crisis of modernity is neither considered nor heard (Ali, 2011, pp. 235, 245; see generally Mahmood, 2011a). This is not to cast the TJ as being committed to liberal gender equality, but to consider other epistemes and ways in which to be, and to be free, beyond the liberal optics of equality.

The representation of the TJ as an 'antechamber of fundamentalism' that promotes segregation and the separation of Muslims from mainstream society is projected as a problem. The fear that this ostensible problem generates operates at two levels: the TJ's desire to be distinctive in their dress and speech; and to preach a brand of Islam that is in fact impossible to assimilate into the Hindu Right's vision of a Hindu state and its Hindutva ideology. Drilling down into the epistemic anxiety that informs the racialising nationalist endeavours, and its ensuing violence, reveals alternative life worlds and conceptions of beingness that are unassimilable within and directly challenge the Hindu Right's vision of a Hindu nation. Within this vision, the racialised nation state is being constructed as everything that the TJ philosophy will not allow the Muslim subaltern to be.

6 Conclusion

Unpacking the role of religion in structuring racial formations within the nationalist discourse and the ideology of the Hindu Right in the Indian post-colony complicates the debates on race and race-making (Jaffrelot and Therwath, 2007; see also JM, 2014).[12] It demonstrates the specific ways in which this dynamic informs the agenda of Hindu, anti-Muslim India and how rights operate to render the racialised 'Other' as a pathogen, excludable, expendable, expellable or imprisonable. The resort to courts by the TJ to counter vilification by the Hindu Right and its allies was successful to a degree. Most of the cases against the TJ were dismissed, with one court recognising that they had been made into scapegoats. At the same time, the representation of the TJ as an alien threat to be banished from the Hindu polity through travel bans remained in place and had the effect of characterising Muslims *within* India as suspect and potentially threatening or traitorous.

In tracing how the TJ came to be treated so readily as a 'scapegoat' and existential threat, the discussion exposes the limits of rights pursuits based on the conviction that disempowered groups simply need to keep struggling to ultimately succeed in recovering and reaffirming their humanity. Recognition and accommodation in law are undoubtedly important, and these interventions can also be normatively and structurally disruptive. However, the deeper fissures that have been actively and historically produced, and the hierarchies of human subjects that have been established along the lines of race, remain intact. In fact, such pursuits risk acceding to the religious majoritarian value system in which Muslim lives are devalued.

The analysis has relevance for the larger discussion on race-making and law, by underscoring how the rights discourse remains embedded within a specific epistemological universe that sees itself as complete and supreme. It does not contemplate nor tolerate alternative worldviews. The refusal to consciously know the racial 'Other' and engage with the epistemological challenge that they present are features of both the post-colony and the global context (De Sousa Santos, 2014). The TJ within India and the Muslim globally continue to be stigmatised as undesirable, a threat and/or as a contagion, thus exposing the deeply bigoted processes that are advanced through law and rights discourse, and the violent epistemic impositions that accompany them.

The discussion draws attention to the epistemic disobedience of the 'Other' and how this challenge is generative of the deeper fears and anxieties that shape racialising nationalist projects and anti-Muslim racism globally. It prompts a consideration of the dissident possibilities of alternative epistemes. To consider these possibilities is to enable an epistemic encounter between banished and

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[12]These groups have also expanded their reach through social networking, blogs and Internet hubs.

recognised knowledge systems. It is not to accord exclusive, undifferentiated authority to alternative epistemic arrangements that risks affirming reactionary political projects and their oppressive anti-minority agendas. The analysis invites more complicated conversations on the dynamics of race, religion and rights as well as prompts questions for further investigation. These includes asking: How can alternative epistemes be used to advance more extensive or politically ambitious agendas through legal mechanisms and the institutional framework of rights? Can they meet the challenge of right-wing, racist and national agendas that have been similarly advanced through these mechanisms? Mapping out the specific ideological and epistemic ingredients that structure racial formations in the post-colony and how religion structures race marks a tentative start to answering these questions. It thickens conversations on race-making and its implications for racial justice interventions globally.

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