

A REVIEW OF PRO-PEOPLE JUDGMENTS OF 2022



JUSTICE AND EMPOWERMENT
OF MINORITIES

(A Jamiat Ulama-i-Hind Initiative)





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A Review of Pro-people Judgments of 2022

Executive Summary

In this annual round up of orders and judgements of India's Constitutional courts – various state High Courts and the Supreme Court of India, JEM presents a roundup of various legal cases through judgements and orders that paved new paths in human rights jurisprudence, grant of bail to ensure that the right to personal liberty of any individual is not curtailed unconstitutionally, constitutional rights upheld and the domain of criminal justice reform remains current advanced; bringing some hope and cheer at the as regards to the role played by the Indian judiciary, in spite of voices against it of being partial and kow towing.

JANUARY 2022

♦ *Bulandshahr case, Supreme Court stays Bail granted to prime accused Yogeshraj*

The Supreme Court stayed the bail granted by the Allahabad High Court to Yogeshraj, the main accused of the Bulandshahr mob-violence case, and had ordered him to surrender within seven days. Staying his bail, the SC observed in its order that the matter is quite serious, as under the pretext of the cow slaughter, a police officer has been lynched. Prima facie, it is a case of people taking law into their own hands.





FEBRUARY 2022

- ♦ *A.P. HC observed that Right to protest not taken away if law is challenged before court*

The Andhra Pradesh High Court observed in one of its judgements that merely because a law is challenged before a court, it does not take away the right to protest against it. The division bench held that approaching a constitutional court for redressal of grievances *ipso facto* would not disentitle a citizen from protesting in relation to the same subject-matter.

The court further clarified that it will look at the dispute only from a legal lens, based upon settled parameters of adjudication and stated that the purpose of the protest was to draw the government's attention to an issue.

- ♦ *Kerala HC says WhatsApp group Admin not liable for posts by group members*

The Kerala High Court has ruled that the Admin. (administrator) of a WhatsApp group is not vicariously liable for an objectionable post made by another group member.

MARCH 2022

- ♦ *A Delhi court grants bail to Ishrat Jahan in the Delhi Violence wider conspiracy case*

Delhi's Karkadooma Sessions Court granted bail to lawyer-activist Ishrat Jahan after 25 months of incarceration under UAPA charges for the alleged participation in a larger conspiracy in the Delhi violence that broke out in February 2020. Ishrat was arrested initially on February 26, 2020, on charges of "inciting violence, rioting

and attempt to murder” under the Indian Penal Code. After spending a month in judicial custody, Ishrat along with four others was granted bail by Additional Sessions Judge Manjusha Wadhwa on March 21, 2020.

The court had noted that the role assigned to Ishrat is that she incited the crowd to remain present at the



protest spot as well as raised slogans of freedom, however, no overt act had been imputed to her regarding taking law into her own hands. On the same day, she was re-arrested under UAPA charges and had remained in jail till she was granted bail in March.

APRIL 2022

♦ Assam HC grants bail to Jignesh Mevani

Jignesh Mevani was first arrested by the Assam Police on 20 April, 2022, from the Palanpur circuit house in Banaskantha district in Gujarat at around 11:30 P.M. on the complaint of a BJP member from Kokrajhar, Assam, about his allegedly offensive tweets. In the said case, he was granted bail on 25 April 25, shortly

before being arrested again by the Barpeta Police. The second time he was booked under IPC sections 294 (obscene acts and songs), 323 (voluntarily causing hurt), 353 (assault or criminal force to deter a public servant from discharging duty) and 354 (outraging the modesty of a woman) for allegedly assaulting a woman police officer and preventing her from doing her duty. While the



lower court in Barpeta had denied him bail, Mevani was granted bail by the Assam High Court.

♦ Supreme Court set aside Ashish Mishra's bail

The Supreme Court set aside the bail granted to the main accused in the Lakhimpur Kheri, U.P., violence Ashish Mishra, in light of recent attacks upon case witnesses and concerns raised by victims' families. Following Ashish Mishra's bail in February amidst Uttar Pradesh elections, two witnesses in the district survived assaults and faced death threats. In view of this, the Supreme Court held that a victim of a crime has the unbridled participatory right in the criminal trial process i.e., they have a right to be involved in decisions that



affect them most. In bail processes, the court is required to consider victims' safety and security. As such, the top court criticised the Allahabad High Court for failing to consider judicial precedents while granting the bail and set aside the bail order.

- ♦ *Bombay HC directs Maharashtra Government to withdraw pending criminal cases against farmers and social activists*

The Aurangabad Bench of the Bombay High Court directed the Maharashtra state government to make applications for withdrawal of cases pending against farmers and social activists across the state which were filed in course of agitations/demonstrations, and directed



the subordinate courts to decide these applications on a priority basis.

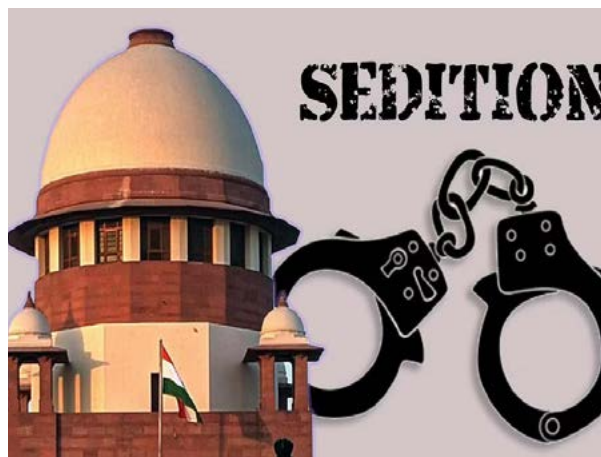
This was in connection with the petition filed by Ajit Babanrao Kale seeking directions against the government to implement the policy decision as per Government Resolution and to close the FIRs/criminal prosecutions filed

against civilian protesters involved in peaceful, democratic protest in Mumbai against the Citizenship Amendment Act (CAA), the National Population Register (NPR) and the nationwide National Register of Citizens (NRC) between January and February 2020. So far, there is no update from the government about submitting these withdrawal applications.

MAY 2022

- ♦ *Supreme Court orders to keep the Sedition Law in abeyance*

While hearing the petitions challenging the constitutional validity of the offence of sedition under Section 124-A of the Indian Penal Code, the



Supreme Court ordered that the Centre and state governments are to refrain from registering any new FIRs under Section 124-A IPC, while it was under consideration by the Centre. The court held that all pending cases, appeals and proceedings with respect to charges framed under Section 124-A are to be kept in abeyance,

and adjudication with respect to other sections may proceed with no prejudice to the accused.

♦ *Allahabad HC describes Lakhimpur Kheri violence as cruel, diabolic, barbaric, gruesome and inhuman*

Dealing with the bail applications of four associates of Ashish Mishra, the prime-accused in Lakhimpur



Kheri, U.P., violence, the Allahabad High Court dismissed the said bail applications citing possible tampering of evidence. The bail applications of Ankit Das, Sumit Jaiswal, Shishupal and Lavkush, all of whom were allegedly active participants in the planning of the Lakhimpur Kheri Massacre, were rejected by the court keeping in mind their political influence. The court also commented that several innocent lives got lost in the most cruel, diabolic, barbaric, gruesome and inhuman manner.

♦ *HC says once declared citizen, a person cannot be declared foreigner*

In a landmark judgment, the Guwahati High Court has ruled that the principle

of *Res Judicata* applies to orders passed by Foreigners' Tribunals (FT). This meant that if an FT finds a person to be an Indian citizen, the same person cannot be tried again or declared foreigner. The Guwahati HC delivered the aforementioned judgment while hearing a batch of 11 petitions of persons who were appealing against FT orders that had declared them foreigners,



the common theme running through all cases being the applicability of the principle of *Res Judicata*.

JUNE 2022

♦ *Rajasthan HC says concrete action plan needed to curb child exploitation and labour*

A PIL was filed with the Rajasthan High Court with the plea to institutionalise effective machinery and mechanism for rescue and post rescue rehabilitation of all child labourers in the State of Rajasthan. The bench comprising acting Chief Justice Mr. Mahindra Mohan Shrivastava and Mr. Justice Sameer Jain, while hearing the petition observed that a number of child labourers were



subjected to unfair police actions and were later rescued. Large number of criminal cases have also been registered against those involved in child trafficking and exploitation of children in various small/large scale industrial and commercial activities. The court found that action has also been initiated where a child labourer were found dead.

Later in July, the Rajasthan High Court permitted impleadment of the Centre's Labour Department in a PIL seeking to institutionalise a 'rescue and rehabilitation mechanism' for all child labourers in the State.

JULY 2022

♦ *Supreme Court grants interim bail to Mohammed Zubair in all UP Police FIRs*

In July, 2022, the Supreme Court ordered the release of co-founder of AltNews a fact-checking web portal, Mohammed Zubair, and granted him interim bail in all U.P. Police FIRs and said that the case should be handled by one investigating authority i.e. Special

Cell of Delhi Police. The SC also refused to impose a bail condition on him to prevent him from tweeting again.

Zubair was first arrested by the Delhi police on 27 June over a tweet posted by him in 2018 and was later remanded in the other FIRs registered by the UP Police. Zubair was charged under IPC sections 153A (promoting enmity), 295A (acts to outrage religious feelings), and 298 (uttering words to wound religious feelings), along with section 67 (publishing or transmitting obscene material) of the Information Technology Act.

♦ *Kerala HC observes that every Muslim is entitled to offer prayer in a mosque and get a decent burial according to civil rights*

In a petition filed by a Waqf Board arguing that since some of its members had changed to a different sect, they were not entitled to offer prayers and bury their dead bodies on its property, the Kerala High Court ruled that every Muslim has the right to offer prayers in any mosque or bury their dead in a public Qabaristan (burial

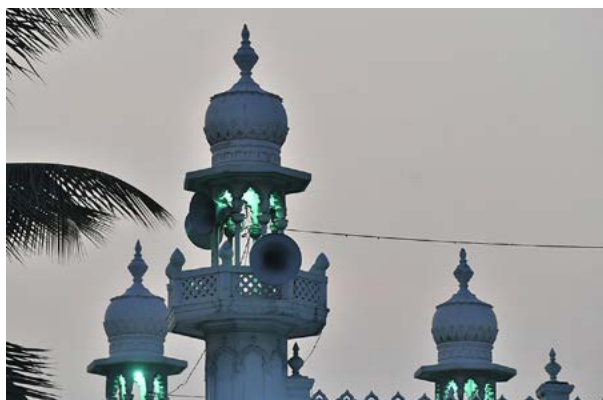


ground). The court further held that this right cannot be obstructed based on their sect.

AUGUST 2022

- ♦ *Karnataka HC observed that Azaan on loudspeakers does not violate fundamental rights of people of other faiths*

The Karnataka High Court disposed of a PIL filed against delivering *Azaan* on loudspeakers, which alleged that it hurts



the sentiments of believers of other faiths. The court observed that Article 25 and 26 of the Constitution embody the principle of “religious tolerance” which are a characteristic of the Indian civilisation. The court further noted that the contention that the contents of *Azaan* and the words “Allahu Akbar” violate the fundamental rights guaranteed to the petitioner as well as persons of other faith cannot be accepted.

- ♦ *Delhi HC observed that Right to free speech and expression includes the right to publish and circulate one’s opinions*

The Delhi High Court passed an order in an interlocutory application by a media house against online news portal *Newslandry* for allegedly ridiculing and defaming its news broadcast and anchors through its content. The Court refused to grant any interim relief to the plaintiff (media house) and dismissed its application for interim relief.

The observations made by the court during this order were significant. While the court reiterated a largely



conventional and existing view that there needs to be a balance between the right to reputation and right to freedom of speech, the court also recognised the diversity in reporting of news in India. And most importantly, the court noted and ascribed importance to satire in democracy and stated that satire is devoid of malice. The significance of this observation lies in the fact the court sees satire as something that goes beyond malice or harm to reputation.

- ♦ *Allahabad HC stays suit seeking removal of Shahi Idgah in Krishna Janmabhoomi*



In Mathura's Krishna Janmabhoomi – Shahi Idgah mosque dispute, the Allahabad High Court stayed the proceedings in a suit filed before a Mathura court that had sought removal of the Idgah. The Krishna Janmabhoomi-Shahi Idgah dispute is revolving around the *Krishna Janmasthan Seva Sangh* that looked after the Katra Keshav Dev temple property, and had allegedly entered into an illegal compromise with the Committee of Management of Trust Masjid Idgah in 1968, by way of



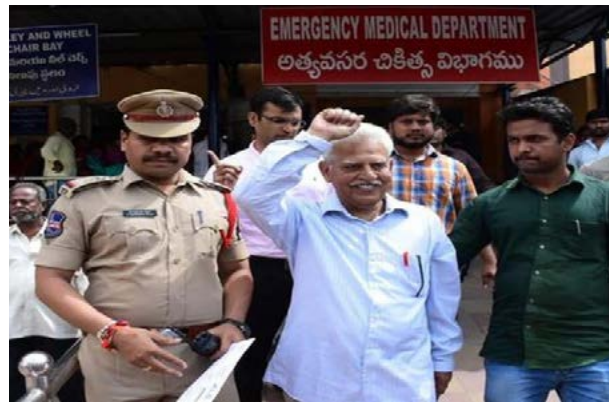
which a huge chunk of land was given to the Idgah including the spot where allegedly the deity was born.

- ♦ *Delhi HC says cannot evict persons using “Bulldozer” and leave them shelterless without prior notice*

Dealing with a plea filed by Shakarpur Slum Union against the alleged 3-day demolition overnight drive conducted without any prior notice by Delhi Development Authority (DDA) officials in the Shakarpur district of Delhi, the Delhi High Court observed that persons cannot be evicted with a bulldozer at their doorstep “early in the morning or late in

the evening” without any prior notice, rendering them completely shelterless.

The Court further directed the DDA to give sufficient time to the residents to make alternate arrangements, or steps should be taken to accommodate the dwellers in the shelters provided by the DUSIB for three months so that the persons, whose jhuggis are being demolished, are able to find some alternate accommodation.



- ♦ *Supreme Court grants bail to Dr. Varavara Rao on medical grounds*

The 84-year-old Telugu poet, Dr Varavara Rao who is one of the accused in the Bhima Koregaon conspiracy case, was granted bail on medical grounds by the Supreme Court. The order by the SC came as a particular relief as the court also did away with the Bombay High Court's condition for him to surrender after three months. Rao had filed a Special Leave Petition (SLP) challenging a Bombay High Court order that denied him permanent bail on medical grounds. Rao had been granted temporary bail on medical grounds in

April, 2022 but there was a requirement for him to surrender at the end of the bail duration.

The court allowed Rao to seek medical attention as per his choice and keep the NIA authorities informed of his medical



condition. The court also ordered Rao to not leave the area of Greater Mumbai without express permission from the Special NIA Court. The court also forbade him from contacting any witnesses or doing anything to influence the investigation.

SEPTEMBER 2022

- ♦ *Delhi Court observes evidence against Sharjeel Imam was “scanty and sketchy”*

Sharjeel Imam was granted bail by a Delhi court in a sedition case wherein he has been charged with making a “provocative remark” that allegedly incited violence in the Jamia Nagar neighborhood in 2019. The judge noted that after going through the evidence provided, the court was of the prima facie view that the case against him

was sketchy. Imam has nonetheless continued to be in prison as he hasn’t received bail in the Delhi communal riots conspiracy case lodged against him.

- ♦ *Gujarat HC grants Interim Bail to Gujarat ex-DGP R B Sreekumar*



The Gujarat High Court granted retired DGP RB Sreekumar temporary release till November 15, 2022. The court also gave him permission to seek a regular release in connection with accusations of “fabricating evidence related to the riots of 2002” and make an application before the Sessions court.

- ♦ *Punjab & Haryana HC orders constituting a SIT to investigate the missing report of the Justice Gurnam Singh Commission Report*

In the Saka Nakodar case, the Punjab and Haryana High Court sent a notice to the Punjab government instructing them to form a special investigation team (SIT) to look into the “missing” portion of the Justice Gurnam Singh Commission Report in an effort to ensure justice and the truth for the relatives of those killed in the Nakodar police firing of 1986. On



February 4, 1986, four Sikh men who were taking part in a peaceful religious march and protest in Nakodar, against the desecration of Sri Guru Granth Sahib, were shot and fatally wounded by Indian security forces.

The first portion of the investigation report was presented to the Punjab Assembly on March 5, 2001, however the second portion of the report was never presented. What was reportedly missing from the Punjab government's possession was the second part of the Commission report dated October 31, 1986, which comprised major evidence, exhibit files, sworn testimonies of police officials, administrative authorities, and witnesses, among other things.

♦ *Supreme Court grants Bail to journalist Siddique Kappan in Hathras conspiracy case*

The Supreme Court granted bail to Kerala journalist Siddique Kappan, who has been under the custody of



the Uttar Pradesh police since October 6, 2020. He faced charges under the Unlawful Activities Prevention Act

(UAPA). Kappan was arrested while he was on his way to Hathras in Uttar Pradesh where a Dalit woman had died after allegedly being gang-raped. A bench comprising the then Chief Justice of India U.U. Lalit and Justice S. Ravindra Bhat granted him bail, directing Kappan to remain in Delhi for the next six weeks after the release from an Uttar Pradesh prison and also mark his presence with the local police station every week.

However, Kappan continued to remain incarcerated in jail because a local court in Lucknow had rejected his bail in the PMLA case on October 31. Even under the UAPA matter, in which he was granted bail, the verification sureties, including the one given by former vice-chancellor of Lucknow University, Roop Rekha Verma, have still not been completed by the authorities.

♦ *Supreme Court grants Interim Bail to activist Teesta Setalvad*



Journalist and human rights activist Teesta Setalvad was granted interim bail by the Supreme Court in the case

where she faces trumped up charges foisted upon her by a vindictive regime.

On 25 June, 2022, just a day after the Supreme Court dismissed a Special Leave Petition (SLP) moved by Zakia Jafri seeking a proper investigation into the wider conspiracy behind the 2002 Gujarat carnage, a team of the Gujarat Anti-Terrorism Squad (ATS) barged into Testa's Mumbai home and forcibly detained her, without any arrest warrant or disclosing the

day after the judgment in the Zakia Jafri case, and doesn't contain anything other than the SC's observations in the judgment. Moreover, the Gujarat High Court gave a long adjournment after Setalvad applied for bail, making the notice to the State returnable in six weeks. The charges are not pertaining to serious offenses like murder, instead they deal with alleged forgery of documents filed in court, allegations over a decade old, and thus, the offenses do not bar the grant of bail.



FIR. The charge sheet filed by the SIT specified the crime of reportedly “fabricating evidence” and engaging in “forgery” in cases connected to the 2002 Gujarat riots.

While hearing the arguments of the case, the SC bench had observed that the petitioner i.e Setalvad had been in custody for over two months, during which no charge sheet had been filed. It noted that the FIR was filed just the

OCTOBER 2022

♦ *Varanasi Court rejects plea to conduct carbon dating test of “shivling” of Gyanvyapi Temple*

In the Shringar Gauri case, a Varanasi court rejected the plea filed to conduct carbon dating of a structure discovered in the Wazu Khana (ablution tank) of the Gyanvyapi mosque. District Judge Ajay Krishna Vishweshwara cited the possibility of causing damage to the structure as



the reason for rejecting the plea. The Supreme Court had previously ordered that the structure and the spot where it was found be protected from damage. The Allahabad High Court also fixed 18 January, 2023, for further hearing on another revision petition filed by Laxmi Devi and others challenging the Varanasi district judge's order by which the lower court had refused the demand of carbon dating of a 'Shivling' claimed to have been found in the Gyanvapi mosque complex.

Assam, where people accused of being illegal immigrants are incarcerated, pending deportation or bail.

NOVEMBER 2022

♦ *Madras HC says everyone must be give an access to the burial ground irrespective of the caste or community*
The Madras High Court bench of Justice N Anand Venkatesh, while adjudicating on a petition seeking directions to



♦ *Rajasthan HC says essential to maintain detention centres in good condition*

The Rajasthan High Court called for proper maintenance of Detention Centres, facilities where foreign nationals awaiting repatriation with their home countries are lodged till deportation.

This order is significant, and might have a potential impact on other such facilities, especially those in the state of

prevent the burial or cremation of dead bodies at certain government land in Pollachi, Tamil Nadu, declared that everyone must be allowed to cremate the dead bodies in the place which is notified as a burial ground, irrespective of their caste or community. The court directed the state government to take strict action if it is found that cremation of dead bodies is not being allowed based on caste.

◆ *Bombay HC observes no prima facie case against Anand Teltumbde*

The Bombay High Court granted bail on merits to Prof. Anand Teltumbde, accused in the Bhima Koregaon case. The bench held that no prima facie case was made out against Teltumbde to establish that he was involved in any terrorist acts. The court declared that offences under section 13 (unlawful activities), 16 (terrorist act) and 18 (conspiracy) of the UAPA are not made out against him, and only sections 38 (offences related to membership of a terrorist organization) and 39 (Offence relating to support given to a terrorist organization) were made out.



Later, on 25 November, the Supreme Court rejected the National Investigation Agency's appeal against the Bombay High Court's decision to grant bail to Anand Teltumbde in the Elgar Parishad case. The division bench said that it will not interfere with the High Court order. Accordingly, Dr Teltumbde was released from prison.

◆ *Supreme Court orders Gautam Navlakha to be placed under house arrest*

Activist Gautam Navlakha, who is one of the accused in the Bhima Koregaon case, was granted the request for house arrest, albeit with rather stringent conditions. In addition to the age and health concerns, the court noted that while chargesheet has been filed against Navlakha on October 9, 2020 no charges were yet framed against him and that he has been in custody as an undertrial prisoner since April 14, 2020.

The court stated that the house arrest would be granted subject to Navlakha depositing a sum of Rs. 2.4 lakhs with Navi Mumbai Police Commissioner which is a rough estimate of expenses



which would be borne by the State for making available police personnel at his house arrest location. Additionally, he shall provide local surety for Rs. 2 lakhs. The house arrest has been extended until the second week of January.

◆ *M.P. High Court directs state government not to take any coercive action against voluntary religious conversions*



The Madhya Pradesh High Court issued a significant ruling prohibiting the State Government from using coercion against anyone who violates Section 10 of the Madhya Pradesh Freedom of Religion Act, 2021, which calls for anyone wishing to change their religion to make a declaration to the District Magistrate in advance. The M.P. High Court also acknowledged that the freedom to choose a religion and the freedom to publicly express or refrain from publicly expressing those choices are both implicit in the Constitutional right to freedom of religion under Article 25..

♦ *Supreme Court takes 1984 Anti-Sikh Riots SIT report on record*

On 3 November, 2022, the summarised report submitted by a special investigation team (SIT) appointed by the court in 2014 in the cases related to the 1984 anti-Sikh riots was taken on record by the Supreme Court. The bench deferred the hearing of a plea seeking fresh investigation into the 1984 riots for two weeks to enable an examination of the SIT report. In this fresh petition

filed, the petitioners have cited the SIT report filed on November 29, 2019, to argue that the authorities have been conducting sham trials. Now that the report has been taken on record, the top court said it will go through the report and the hearing will take place in two weeks. The matter is yet to be listed.

♦ *Delhi Court observes that mere possession of banned literature is not an offence*

It was observed by a Delhi Court that for cases filed under the Unlawful Activities (Prevention) Act, (UAPA) mere possession of “jihadi literature” having a “particular religious philosophy” would not amount to an offence unless there is material to show execution of such philosophy to commit terrorist acts. The court further observed that the proposition that holding mere literature is a crime runs counter to the freedoms and rights guaranteed by Article 19 of the Constitution. The abovementioned statement were made by the court as it prepared charges for nine defendants in a National Investigation Agency investigation involving the online spread of ISIS ideology.



DECEMBER 2022

♦ *Supreme Court stays arrest of Indore Professor in 'Hinduphobic' Book Case*

The arrest of Indore Prof. Inamur Rehman in connection with allegations of “promoting Hinduphobia” was stayed by the Supreme Court. The Indore police had lodged an FIR against Rehman in connection with a “controversial” book found in the library of the college that allegedly “encourages religious fundamentalism”. Rehman was the principal of the law college, while the book in question has been written by Dr Farhat Khan. On December 19, 2022, the bench also sought the response of the Madhya Pradesh government in the matter, within four weeks.

♦ *Delhi Court released Umar Khalid, Khalid Saifi in Delhi Riots 2020*

Student activist Umar Khalid and

United against Hate member Khalid Saifi were granted bail in a case connected to the 2020 North East Delhi riots. The case was registered on the basis of the statement of a police constable wherein it was stated that a large crowd had gathered near Chand Bagh Pulia on February 24, 2020 and started pelting stones. A FIR was registered under sections 109, 114, 147, 148, 149, 153-A, 186, 212, 353, 395, 427, 435, 436, 452, 454, 505, 34 and 120-B of IPC along with sections 3 and 4 of Prevention of Damage to Public Property Act and section 25 and 27 of Arms Act. While granting bail to Umar Khalid in the FIR case, the court held that he cannot be permitted to remain behind bars on the basis of sketchy material against him. However, both Khalid and Saifi continue to remain incarcerated in the UAPA case alleging a larger conspiracy behind the riots.

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JUSTICE AND EMPOWERMENT OF MINORITIES
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Justice and Empowerment of Minorities (JEM) is an initiative of Jamiat Ulama-i-Hind, the country's oldest and largest socio-cultural organisation of Indian Muslims.

JEM's mission is to safeguard the human rights of country's minorities while countering hate speech targeted against them. It endeavours to collect, collate and present cases of harassment, in any form, perpetrated against the minorities by right-wing elements. It's aim is to promote Rule of Law and access to justice, equal rights, citizen's security and human rights, in addition to defending and empowering religious minorities, marginalised and persecuted individuals, groups and communities through Advocacy.

JEM's aim is to empower and provide justice and judicial assistance to the victims of such crimes, which could be categorised under 'Hate Crimes'. It further aims to strengthen the constitutional edifice of the country, which guarantees the rights and dignity of minority groups, apart from helping to build a vibrant, thriving and affluent India.

JEM publishes four Quarterly Reviews and an Annual Review every year, highlighting the hate crimes against minorities, and additionally responding to marginalisation and persecution of minorities, in addition to ensuring implementation of equal rights, justice and peace, religious tolerance and coexistence in the country.



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