

Indian Feminist Jurisprudence; Gender Equality and Secularist Challenges

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The various dimensions of the Indian judicial system and multiple interpretations of the core constitutional concepts like secularism, equality, and fundamental rights became effective political tools in the hands of Hindu fundamentalists over the years. Their struggle to become an ideologically dominant force in historical, cultural, political, social, and economic areas will remain incomplete without the dominance in law, specifically while dealing with the interpretation of the law. The contradictory relationships between secularism and minority rights, gender equality, and the right to religion became significant intervention areas for the Hindutva forces. So, the central question that this paper tries to explore is how the evolving contradictions and conflicts in the legal discourse of secularism became political propaganda tools for Hindutva fundamentalists in the public domain for their struggle for ideological dominance in the country, specifically in the area of gender equality and minority rights. This study also tries to find out the possibilities and challenges of feminist jurisprudence in India in developing an alternative legal discourse that can accommodate both struggles to challenge the normative conceptualizations of gender in law and the promotion of democratic secularism. This paper is divided into different parts, which discuss the various ideological debates regarding the idea of secularism in Indian society, Hindutva's construction of positive secularism, discussions about some of the recent judgments related to gender equality, Personal laws, and minority rights, and in the final section I will discuss the possibilities and challenges of Feminist jurisprudence in creating an anti-communal and secularist legal discourse to address gender questions in the Indian context.

Keywords – Secularism, Feminist Jurisprudence, Hindutva, Minority Rights, Gender Equality, Judiciary

The preservation of India's democratic-secular culture is greatly influenced by the Indian judicial system and the legal discourses it produces. Indian judiciary has a dynamic history of transformations from a protector of constitutional values to a powerful political actor who shapes law and formulates public policies. Unquestionably the Indian judicial system plays a significant role in the governance of modern India. The Indian Judiciary became able to address various issues related to civil liberties, free speech, caste discrimination, and labour issues due to the gradual expansion of Public Interest litigation and the judiciary's activist role. The Court has welcomed public-spirited citizens over the last few decades, pushed the boundaries of fundamental rights, and even "rewrote portions of the Constitution"

(Bhagwati,1985). Over time, the Court has evolved into a battleground for political, social, and economic conflicts where socioeconomic justice is served (Pillai,1984). This controversial activist role of the judiciary achieved immense popular legitimacy in the last few years. Law has a significant role in mediating social conflicts, and it also plays a role in both legitimizing and undermining unequal power relations as an official through the relatively autonomous discourse of the state (Kapur and Cossman,1993, p-36). Thus, it is important to identify how the right-wing forces have used this popular legitimacy of the judiciary as a political tool to expand their ideological hegemony in India. Over these years, we have seen the various attempts of fundamentalist forces of the right-wing to use the existing contradiction and conflicts of legal discourses regarding secularism, minority rights, and gender equality for their political agenda. From the 90s, various legal battles gave validity to the interpretation of rights and the concept of secularism as propagated by Hindutva forces. When interpreting Section 123 of the Representation of Peoples Act in 1951, the Supreme Court defined Hindutva as Indian culture, not Hindu culture. This case is commonly referred to as the “Hindutva case.” Right-wing forces have widely publicized this important decision, which over time has figured into political narratives surrounding the debate over Hindu and Indian cultures. The Shaha Bano case was another significant judgment that was integrated into the political platform of Hindutva. This case has far-reaching political repercussions in India that have never been seen before. Shah Bano, a divorced 62-year-old woman, filed a petition for maintenance from her husband in 1973 by section 125 of the Code of Criminal Procedure. Muhammed Ahmed Khan, her husband, defended himself by stating that Shah Bano would be in a position to receive maintenance during the iddat period by CrPc 127 (Muslim Personal Laws). Although the iddat period is arbitrary, it is typically three months. Following the thorough arguments, the court upheld that CrPc 125 applies to all Indian citizens regardless of their religion and could also apply in this particular case. This case was one of the first to address Muslim women’s rights, and the ruling is recognized as a landmark verdict in the history of the Indian judiciary. However, the traditional Muslim community opposed this decision. They claimed that the judgment was against the community’s laws for Muslims. Finally, the Rajiv Gandhi administration reversed this historic ruling by enacting the Muslim Women Protection on Divorce Act in 1986. This law states that the maintenance obligation may only be imposed during the Iddat period. If the woman could not provide for herself, the magistrate could direct the Waqf board to provide means of maintenance for the wife and children. This enactment of the law was highly criticized by the major progressive forces from different left, liberals, and feminist sections. Surprisingly Sanga Parivar also opposed the bill and strongly demanded the enactment of the Uniform Civil Code to secure gender equality in society. Sanga Parivar’s interest in gender equality is nothing but an attempt to undermine minority rights and promote majoritarian rules. These cases and rulings continue to be more prevalent in the anti-Islamic political discourses of India’s right wing. In this way, the Shah Bano case catalyzed Hindutva’s political campaign to use the gender equality debate to undermine minority rights. Since then, Hindutva’s methods for utilizing legal discourses have also developed. The problematic relationship of Hindutva with Indian legal discourse in interacting with gender equality and secularism has a long history. It is part of a larger agenda to secure dominance and redefine secularism and equality, which are core to constitutional values. What is interesting about this rightist agenda is that they largely focus on legal discourses other than legal cases or legislation.

How we can tackle these inner contradictions of legal discourse through the discourse of feminist jurisprudence, which is committed to democracy and substantive equality, is the major question here.

Indian Constitution and Secularism

Prof. K.T. Shah proposed an amendment to add the words “Secular, federal, and socialist” to the clause of Article 1 in the Constituent Assembly’s debate on November 15, 1948; Ambedkar countered the proposal’s claims by describing his interpretation of the Constitution. According to him, the people themselves must decide what the state’s policies should be and, depending on the period and circumstances, how society should be organized in terms of its social and economic facets. It cannot be stated in the Constitution itself because doing so would seriously undermine democracy. (Mukhopadhyay, 2018) These conflicts regarding the inclusion of secularism in the preamble uncovered the different opinions related to the concept of secularism. The Constituent Assembly agreed that our constitution should uphold the secular spirit and that doing so is crucial to creating a democratic country. However, the issue that took the time of the constituent assembly was which secularist stance the nation should adopt.

The Western version of the complete separation of religion and state is considered a significant step toward secularism. Alternatively, put the secularism of no-concern theory. People who supported this approach argued that religious matters should be people’s private affairs and defended everyone’s right to free speech and religious liberty. In this secularist view, individual freedom is valued above communal values. The establishment and supremacy of the state also had issues, in addition to religious freedom. Religion was to be consigned to the smallest possible sphere for the state to develop into a modern Leviathan. (Jha, 2002). A secular state that upholds the equality of all religions was urged to be established by the other leading secularists. Given how deeply ingrained religion is in Indian society, the notion that the state should keep out of matters of religion will have a detrimental effect on the country’s development. K M Munshi claimed that we had to develop uniquely Indian secularism because the non-establishment clause (of the US Constitution) was inapplicable to Indian circumstances. (Jha, 2002). These significant differences between non-concern and equal respect camps reflected other major debates related to the discussions of the Inclusion of the terms religious worship and religious practice, Linguistic and religious minorities, Uniform civil code, and political safeguards for minorities.

However, the top leaders’ views on the idea of secularism were changed by the religiously motivated country division and the riots that followed. The terms “secularism” and “socialism” were only added to the Constitution’s preamble in 1976. However, since India’s independence, several fundamental rights and constitutional provisions have guaranteed the country’s secular nature. The history and diversity of India’s religions are reflected in the secularism practised there. We consequently adopted a form of secularism that promotes religious equality and state neutrality toward all religious groups. Respect for all religions is essential. In other words, while the state should respect religious freedom, it is also responsible for stepping in when religious practices lead to discrimination and racial strife. To ensure that no one will suffer because of their community’s lack of size, Indian secularism adopted the principle of substantive equality to religious communities while also being aware

of the conditions of minority communities. Therefore, the idea of secularism in India is linked to the idea of defending the rights and culture of minorities. The freedom of religion is guaranteed as a fundamental right in Articles 21 to 28 of the Constitution. The right to free speech and the freedom to practice, profess and spread one's religion are both guaranteed by Article 25. Articles 29 and 30, on the other hand, guarantee that minorities have the freedom to operate their religious institutions and the right to defend their culture. In this case, both individual and collective rights were incorporated. Nevertheless, from the mid-80s and 90s, Indian secularism faced various kinds of criticisms from both civil society and the academic community. They started to question the viability of Indian secularism. The Indian intellectuals responded to the historical context of increased communal riots with the significant question of Is Indian secularism which promotes Sarva dharma samabhavana, is capable of protecting the country from communal tensions.

Indian Secularism and Its conflicts

As Nehru pointed out in a conversation with André Malraux, 'Creating of secular state in a religious country' was one of the greatest challenging tasks for the Indian constituent assembly (Chiriyankandath, 2008). There were intense debates and various attitudes toward the idea of secularism. In contrast to Jawaharlal Nehru, who originally envisioned secularism as the non-interference of religion in matters of state, Mahatma Gandhi advocated for the idea of "Sarva dharma samabhavana," or the equality of all religions. Ambedkar fought for the coexistence of all religions and religious equality. His religious philosophy greatly influenced his attitude toward secularism. He disapproved of the notion of a state religion. He advocated for the right to practice one's religion openly, freely, and within boundaries consistent with morality and public order. This included the freedom to practice, profess, and convert. (Ambedkar, 1945) The contradictions regarding the approach toward secularism and the existing conflicts between the national leadership about which path of secularism the country should choose are reflected in the constitution assembly. Separating religion from the state was not a popular choice for the constitution's framers at the time, especially in a religiously diverse nation like India, where religion plays a significant role in identity construction and daily life. On the other hand, the state cannot disregard the vulnerability of minorities in the nation and the capability of the majoritarian threat.

Hindutva's Critique of Indian Secularism

The Hindu right wing's perspectives on secularism were always present in the Indian secularist discourse. Their significant arguments were that the official state-practised version of Indian secularism is pseudo-secularism. They advocate for positive secularism, which means justice for all while appeasing none. This formal approach to equality is based on the idea of sameness. Article 370, which granted special status for Jammu and Kashmir and any other policies which grant special rights to minorities opposed and criticized by the Hindutva forces as against the basic principle of secularism and also termed Indian secularism as nothing but appeasement towards minorities. Based on this formal approach to equality, Hindu fundamentalists call for adopting a uniform civil code, which the BJP and RSS claim is a crucial first step toward creating a prosperous secularist nation. Even though they are a group of religious fundamentalists, they are at ease with the idea of

secularism because the conflict that currently exists within the Indian idea of secularism can be easily used as a weapon to attack minority rights. The idea that all religions should be treated equally strengthens communalism's categories and the dominant religious group's ability to set the standard by which all others are judged. These secularism interpretations enrich the widely held idea of secularism by introducing a particular comprehension of equality (Kapur, 2020).

According to Deoras, one of the key figures in the RSS, proselytization, and secularism cannot coexist if secularism is defined as treating all religions equally. People who think conversion is possible do so because they think their religion is better than all others. Thus, their organizations are unable to assert that they are secular. Contrarily, Hinduism disbelieves in conversions, and Hindus have never actively spread their religion. Hindu organizations alone can therefore be truly secular (Kapur and Cossman, 1993). The Hindu fundamentalist tries to redefine that the true secularist spirit is embedded in Hindu values and therefore the Hindu nation is a secular state in it all aspects.

Feminist Jurisprudence; History and Theoretical Overview

A feminist legal theory called feminist jurisprudence seeks to critically examine how existing legal discourses and the neutrality of the law perpetuate discrimination against women. The phrase was first used by Anna Scale in 1978 at a party and conference commemorating the 25th anniversary of the first woman graduating from Harvard Law School. (Scales, 2006). Feminist jurisprudence describes how the law contributed to the social status of women as inferiors. By reshaping legal discourse and how it addresses gender issues, its primary goal is to elevate the status of women. The Feminist philosophy of law, as cited in the Stanford Encyclopedia of Philosophy, pinpoints the widespread impact of patriarchal norms on legal structures and demonstrates how they affect the material conditions of women and other people who might not fit into cisgender norms. It also considers issues with how sexuality and the law interact and creates changes in addressing gender inequality, exploitation, and restrictions. Feminist legal philosophy seeks to reformulate and reexamine legal theory to eradicate historical prejudices and enforced inequality while creating human notions and structures for the future.

There are different schools of thought of feminist jurisprudence that deal with the role of institutions and patriarchal social reforms, which construct and dominate the discourses of gender equality. They are traditional or liberal Feminism, Cultural feminism, and postmodern feminism. Liberalist feminism mainly focuses on the role of institutions in social change. According to this school, the state is the major ally of the feminist movement. The central argument of this school of thought is that a patriarchal society is the result of the social structure and the state is responsible for this. The state should get involved in reestablishing an inclusive society and achieving women's freedom and autonomy. They think that freedom can come about through legal equality. Traditional feminism supports liberalism's philosophical positions on ethics, morality, and politics. One of the main criticisms against the traditional school is that because it is largely based on the rule of law, the impartiality and universality of the law, which pays no attention to social differences, can be easily used as a tool to advance injustice against women. school of cultural feminism recognizes and acknowledges the differences and advocates for more accommodative gender relationships. They argue for changes in the institution in a way that it can be more

inclusive in a way that it can appreciate the cultural and social differences between gender roles and their various characteristics. Acceptance of 'essential' differences between men and women is the basic foundation of this school. By essential, they mean the essence of males and females. The cultures they represent are reflected in these differences. This school advocates for the coexistence of differences and fosters mutual respect while acknowledging the biological differences between men and women. This school upholds the distinctive qualities of the female nature, as well as its affirmation and demand for a course of action that elevates these qualities rather than diminishes them. Culture should be built based on women's unity, solidarity, and experiences, according to cultural feminism, which embraces the shared identity of womanhood. Radical feminists believe that patriarchy uses the social system to maintain the relationship of dominance between men and women. They take masculinity as their reference point. Patriarchy through its various forms dominates women (and non-dominant men) and systematically oppresses them.

Patriarchy also denies the claims of gender plurality through the same systems of domination. According to the analysis by Professor Williams, in hard cases (An analysis of biological differences between men and women in the background and cultural stereotypes) the question of biological differences between the sexes collects a social undertone to the point where the oppressive cultural norms of the time emphasize the actual differences. A widely supported legislative mandate might give expression to this confluence of biological and social determinants. Such laws unquestionably require more thorough judicial review. The Court must determine whether the moralistic tradition's majoritarian impulses do not violate an individual's right to autonomy. This is the context for stricter judicial review of this type of legislation everywhere globally. The impact of prevailing cultural norms and the general atmosphere in society that women must contend with when choosing a profession that is otherwise completely unproblematic for their male counterparts is therefore an issue that is immediately pertinent in such circumstances. The approach of the State becomes crucial in such situations. (Verma,2021) On the other hand, postmodernism rejects both conventional liberal notions of equality and the assumption that women and men are fundamentally different from one another. According to postmodernism, the whole idea of equality is a social construct that is a product of patriarchy. What feminism needs is a reconstruction of the whole discourse of gender equality based on women's experiences. They always explore the multiple layers of truth through experiences and perspectives. Postmodern feminist thus argues against the rigidity of the law, because the existing law reflects the prejudices and stereotypes of society and may therefore contribute to female oppression.

Feminist Jurisprudence in India

The early attempts of using judicial frameworks to make significant changes in Indian women's quality of life began in the early colonial period. Different legal acts such as the abolition of Sati, child marriage, and the provision of widow remarriage were examples of such attempts. But these legal acts faced resistance from the Indian traditional ruling class. They considered these changes as against Indian culture. During the making of the constitution, our leaders were determined to provide constitutional guarantees for women and other marginalized sectors in the form of positive discrimination for their empowerment, and at the same time constitution

was instrumental in prohibiting any kind of discrimination based on gender. Some of the constitutional privileges guaranteed for women are;

- Articles 14 and 15 of the constitution prohibit discrimination against citizens based on their race, caste, religion, place of birth, sex, or any combination of these; The Indian Constitution's Article 15 (3) commands the State to make any special provisions in favour of women and children, and Article 16 mandates equal opportunity for all citizens when it comes to employment or appointment to any office under the State.
- Articles 39(a) and (d) - The State shall direct its policy toward ensuring that men and women have equal access to an adequate standard of living and equal compensation for equivalent work.
- The State must establish policies to ensure just and considerate working conditions and maternity leave, as stated in Article 42 of the Indian Constitution.
- Article -243 d (3), 243 d (4), 243 t(3), 243 t(4) - Reservation of seats for women in local governing bodies. It also includes the number of seats reserved for women from the SC and the ST categories.

In the post-independence period equality in workplaces, equal wages, and various religion-based laws regarding marriage, divorce, and property ownership became major areas of debate in the legal arena. The Immoral Traffic (Prevention) Act of 1956, the Commission of Sati (Prevention) Act of 1987 (3 of 1988), the Protection of Women from Domestic Violence Act of 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 were significant laws that went into effect after India gained independence and improved the status of women. The majority of the issues addressed by feminist law in India are rape, divorce, domestic violence, gender discrimination, and sexual and workplace inequality. There have been several attempts to interpret the law in a way that is gender inclusive. Recent decisions involving rape, dowry, pornography, and prostitution are examples of how the interpretation of the law has changed. The court ruled in the *Bodhisattwa* case that "The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many ways" – (*Bodhisattwa Gautam v. Subhra Chakraborty*, 1996)) In *Anuj Garg Vs. Hotel Association of India*, the court upheld the right of women to choose their profession. Court established that safety issues for women should not be a reason to deny the profession to women. Following this judgment, women can now legally work in liquor associations. In a different case involving the unequal status of women about divorce in the Christian community, the court invalidated provisions that violated articles 14, 15, and 21 of the constitution's fundamental rights and backed the idea that women cannot be coerced into marriage by society. *Union of India v. Ammini E.J.*, AIR 1995 Ker 252. Section 497 of the IPC, which made adultery a crime, was challenged as being unconstitutional in the recent case of *Joseph Shine v. Union of India*. After hearing the arguments, the supreme court panel, led by the then-chief justice of India, Deepak Mishra, struck down section 497 on the grounds that it violates the fundamental rights guaranteed by Articles 14 and 15 of the Indian Constitution because it is based on gender stereotypes and encourages gender discrimination. The court stated that it is unconstitutional for any clause to justify a husband or wife having sole authority. Justice Indu Malhotra while reading the final judgment observed that this section 'Institutionalizes

discrimination’ (Sharma, 2020) In the matter related to hereditary property rights, the court declared that in the matters related to Hindu Undivided Family Property, the court ruled that daughters would automatically have equal coparcenary rights by their birth in Vineeta Sharma v Rakesh Sharma case. The Secretary, Ministry of Defense v. Babita Puniya & Others, a case in which the court rendered another significant decision, found that all female army officers were qualified for permanent commissions, putting them in positions of command, and putting them on an equal footing with their male counterparts in terms of promotions, rank, benefits, and pensions. This court decision improved their standing in the defence industry, a field with rigid gender norms. Another important case Vishaka v State of Rajasthan was another landmark judgment in which the court ensured the safety of women in the workplace and the impact of this verdict ultimately materialized in the form of the sexual harassment of women in the workplace ((Prevention, Prohibition, and Redressal) Act, 2013, (Varma 2021)

These are some of the verdicts which show, how the more gender-sensitive way of interpreting the law can make changes in the life quality of women. In this period of widely popularizing narratives of gender equality Vs minority rights, the discourse of feminist jurisprudence needs to make space for adapting a more democratic and secularist approach to interpreting the law. The various approaches of the right wing to manipulate the legal discourse by sang Parivar ideologies expose the limitations of existing legal narratives while dealing with the questions of gender equality and secularism. Gender has multiple layers and is always as Sherin defines ‘located historically, materially and social’ (Agnes, 2019). It’s important to recognize the flaws in feminist politics while dealing with the politics of religion and faith to move towards a more inclusive approach to gender equality. How can we reconstruct the language of Indian feminist jurisprudence in a way that can be more pluralistic in nature and expands its horizons beyond the universalized assumptions about gender as a stable category? Legal discourse as mentioned earlier has legitimized power in reconstituting gender identity. So, when it comes to the question of feminist jurisprudence, it needs to rework the law and its approach to gender and democratic secularism. It’s crucial to oppose attempts to use the legal interpretation of the right to religion and belief to reinstate gender and cultural stereotypes. The possibilities of language, logic, and structure of the law must be identified as supporting tools of communal agendas to challenge the Hindutva’s religious majoritarianism, which shapes gender norms. The discourse of feminist jurisprudence should evolve in a manner that can question how the identity of Muslim women is constructed only in terms of personal law and ignored their economic, social, and political issues and concerns. In the case of Triple talaq while both the government and Court ignored the core concerns of Banu such as access to regular monthly maintenance for her children and fair and reasonable settlements for the future. Muslim women are described by Hindu fundamentalists as being neither respected nor having any personal rights or agency. Disregarding Muslim traditions and beliefs is justified when it comes to the matter of liberating Muslim women from oppression. The various nuances of this discourse on Muslim women of Hindu fundamentalists reestablish the hierarchical power relationship between these religions, i.e.; Hinduism is superior to Islam and Muslim women should be protected by Hindu men. This discourse of polarization and communalization is slowly becoming part of judicial language and it should be challenged. To address the injustice through the various channels available

to Muslim women, a more complex and pragmatic strategy is required given the current political environment. Feminist jurisprudence should also be concerned with this issue.

Legal Discourses and Communalization of Gender

In a pluralistic and democratic country like India, where citizens are divided by religion, caste, languages, and regional differences and united by a constitutional framework, the legal discourse plays an undeniable role in defining and rearticulating the concepts of gender norms and community identity and has had the moral and legal responsibility to hold together those fragile threads of communal harmony as well. As a result of the ambivalent nature of secularism and the absence of an accurate definition, the major duty to interpret the secularistic values that the country should follow fell upon Judiciary. The judiciary has produced and interpreted various forms and characters of Indian secularism such as tolerance, equality, and way of life at different times and contexts. In *Sardar Taheruddin Syedna Saheb v. State of Bombay*, which was decided before the 42nd Amendment, Justice Ayyangar stated that Articles 25 and 26 are a manifestation of the idea of religious tolerance, which has been a defining characteristic of Indian civilization, since its inception. Additionally, they emphasize the secular character of Indian democracy, which the founding fathers believed ought to be the basis of the Constitution. This was the first verdict where the supreme court made a definite remark on the concept of Indian secularism. With the historic rulings in the cases of *Keshvanda Bharathi v. State of Kerala* and *S. R. Bommai v. Union of India*, the Indian Supreme Court later restored secularism's position as a fundamental component of the Indian Constitution. The court equated secularism with tolerance in the contested *Ram Janma Bhoomi* case, the *Ismail Faruqi v. Union of India* case, and the *R.C. Podayal* case. Justice J. S. Varma cited passages from the Rig Veda, Athar Veda, and Yajur Veda to support the idea of Sarva dharma Sama Bhavana. Later, in *Ahmedabad St. Xaviers College Vs. State of Gujarat*, Justices Chandrachud and Mathew opined that our constitution did not erect a rigid barrier separating the two, which is now known as the "wall of separation between church and state." We have serious doubts about the term "secular state," which describes a particular arrangement of interactions between the state and the church, being appropriately applied to India. India can be described as a secular state in a certain sense. The Constitution contains some clauses that cause you to pause. (Saxena, 2015)

In 1966, in the verdict of the case *Sastri Yaganapurushdji and others Vs Muldas Brudardas Vaishya and others*, the supreme court's judgment concluded that Hinduism "may broadly be described as a way of life" rather than religion per se. In a significant decision written by Justice J.S. Varma in 1995, the supreme court stated that the term "Hindutva" is more closely related to the way of life of those who reside in the subcontinent. The publication of a booklet titled "Supreme Court Judgment on Hindutva: A Way of Life" helped the RSS and other Hindu fundamentalist organizations spread awareness of these rulings. BJP declared in 1999 that Hindutva is not a sectarian or exclusive idea, despite all attempts to portray it as such. because the Indian people have consistently rejected such a view, and now the judiciary has also endorsed the true meaning and content of Hindutva (Bose, 2018).

By organizing consent and generating common sense through a legal framework, the Hindutva forces in the nation have been attempting to undermine the legitimacy

of the judiciary to create an ideologically dominant discourse. For a fundamentalist to rebuild the community identity, gender identity definition is crucial. Representations of mothers, families, and women have symbolically constituted communities. Women's identities and the gender norms they uphold are intertwined with their sense of community, and at the same time, women's gender identities form the foundation of and are part of communities. (Kapur and Cossman, 1993). Hindutva's nationalist, organizational and ideological agenda, which is essential for transforming India into a Hindu nation and demonizing the Muslim minority, is increasingly emphasizing how the identities of men and women are constructed. (Kapur, 2020). Attempts to rearticulate the contradictory relationship between gender equality and religious freedom and to popularize these internal tensions between the constitutionally protected concepts are central to Hindutva's campaign. Normalizing the traditional role of women in society through different discourses and using the same discourse to criticize the Muslim community in the name of gender equality is the major part of Hindutva's project of polarizing the communities through the communalization of gender. The right-wing force's concept of gender equality is intricately connected to their idea of secularism. The normative concept of religious equality or the approach to equality as sameness is reflected here as well. Hindutva forces contend that rather than treating all women equally to men, all Muslim women—or any other non-Hindu women—should be treated the same as Hindu women. The rigid and narrow perspective on Hinduism now became a major threat to the Indian model of secularism as well as the substantive concept of equality it holds. The different ways in which they use the judiciary to popularize this particular understanding of gender equality that resonates with Hindutva's political ideology should also be identified and challenged within the legal framework.

Some of the most recent rulings by the supreme court that address issues of gender and gender equality, such as granting women access to temples and dargahs, decriminalizing adultery, supporting interfaith unions, and criminalising the practice of triple talaq, have been hailed as landmarks decisions that will improve the status of women in the nation and uphold their rights. However, a close examination of these cases reveals some of the political undertones of the rulings that legitimise Hindu (male) majoritarianism. It also illustrates how the legal conflicts over the authority to determine who and what should be Indian women's gender identities are neither neutral nor secular in their languages and approaches. Let's analyze some of the cases in the next section.

Major Cases

Triple Talaq: In 2017, Shayara Bano, with support from the Bharatiya Muslim Mahila Morcha, filed a constitutional challenge against Section 2 of Muslim personal law, which deals with the "dissolution of marriage including talaq." She claimed that this section infringes on her fundamental rights to equality (as guaranteed by articles 14, 15, and 21 of the constitution) and to life and liberty (as guaranteed by article 21), as well as a Muslim man's unrestricted ability to get a divorce, which she claimed results in the gender discrimination that the petitioners are challenging. To demonise the Muslim community and portray them as being against women, the RSS actively organised a campaign to abolish triple talaq and took advantage of the constitution's inherent tension between individual rights and group rights (Kapur, 2020). On 28 December 2017, a bill was introduced in Lok Sabha to criminalise triple talaq.

Hindutva forces used this peculiar situation of legal battle to construct a narrative to constitute Hindu men as saviours of Muslim women from Muslim men. In those narratives, Muslim women lack agency and are devoid of rights and on the other hand, Muslim men are pre-modern, lustful, polygamous, and barbaric. The sanga Parivar leaders' responses to this case further highlight the Hindu nationalist tactic of spreading the prejudiced stereotype that Muslims pose a sexual threat, encouraging the development of masculinist heteronormativity among Hindu men (Agnes, 2019). The prime minister frequently brought up the talaq controversy during the Uttar Pradesh election campaigns, and both the media and politicians completely disregarded the fact that Hindu deserted women are significantly more prevalent than Muslim divorcees and deserted women. Of 2.3 million separated and abandoned women, 2 million are Hindus, compared to 280,000 Muslims. By creating a law that makes triple talaq illegal, the BJP-led central government exploited the situation and used its administrative authority to advance its campaign to persecute the Islamic faith. This is merely another instance of how BJP supporters have turned a patriarchal monopoly challenge into a minority-bashing exercise. (Agnes, 2019).

Hadiya –Hadiya, a student from Kerala, converted to Islam in 2014 and wed Shafin Jahan two years later. The conversion and marriage were contested in a writ of habeas corpus filed by Asokan, Hadiya's father in 2016 at the Kerala High Court. He claimed that Hadiya was forced and manipulated into getting married and converting to Islam and that this was part of a larger effort to enlist her in terrorist groups like IS. The court instructed the police to monitor Hadiya to ensure her safety and ordered a thorough investigation into Shafin Jahan's background. Hadiya declared that Shafin Jahan is her legally wedded husband and that her conversion was not forced upon her. The Kerala High Court, however, reached the following conclusion in 2017: Shafin Jahan was connected to extremists, and the marriage raised questions about a possible Love Jihad case therefore the marriage hasn't any validity and should be dissolved. Shafin Jahan appealed to the supreme court and the court further ordered the NIA to look into the Hadiya case to determine whether the marriage was a component of a larger scheme to convert Hindu women to the Muslim faith to support terrorist activities. Hadiya reiterated in court in 2017 that her marriage was not forced on her and stated she demanded the freedom to choose her life partner. Hadiya's autonomy and agency regarding marriage decisions were upheld by the court's decision later. Justice Chandrachud said that because these decisions are essential to a person's autonomy and right to life, courts have no business approving or disapproving personal choices regarding dressing patterns, food habits, beliefs, and life partners. He argued that the diversity and plurality of cultural expressions that the Constitution was required to uphold were what gave it its strength. (Kapur,2020). The way the court chose to criticize the independent decision of a Hindu woman chose to convert to Islam and wed a Muslim man is what is problematic about all these legal proceedings. The court in a way supported the prevalent view of women as victims who lack the autonomy to make significant decisions on their own and therefore require closer scrutiny. The court's perspective on gender equality, in this case, is consistent with Hindutva forces' political ideals. The independent decision of a Hindu woman to convert to Islam was examined using paternalistic and protectionist terminology. It assisted in reestablishing Hindu men as protectors of women and Muslim men who had been falsely accused of having terrorist ties (Kapur, 2020). The judiciary chose an extraordinarily high level of

scrutiny and surveillance for this specific case, which in many ways gave political validity to the love jihad-related political propaganda of Hindutva forces.

Conclusion

The idea of secularism and equality is a highly contested and debated concept in Indian political history. The validity of secularism and its applicability in a religiously diverse country like India is always a major point of conflict among various intellectuals. When we try to contextualize the debate about the validity of secularism in current Indian society, it's evident that neither our society nor the polity is in a position to make any compromises with secularist values. Amartya Sen defends secularism as a component of a larger concept, that of India as a nation that is fundamentally plural and made up of various religious beliefs, linguistic groups, and social practices. He contends that secularism is a component of a larger effort to acknowledge this heterogeneity (Chandoke,2010). Recognizing the plurality and heterogeneity is always part of the project of Indian secularism and it cannot be applicable unless we understand the relationship between secularist values and the political practice of democracy, substantive equality, constitutional framework, and social justice and rights. So, in the contest between gender question and secularist values, the feminist approach to law cannot be avoided the relationship of gender with its social, cultural, political, and cultural contexts. Only then a comprehensive attack against the Hindutva's attempts to establish an opposed relationship between minority rights and gender equality will be possible. When Hindu fundamentalists threaten the secularization of society and the political system, it's impossible to resist various forms of gender discrimination and the reproduction of gender stereotypes within the legal discourse. The commitments toward secularist and democratic values should be considered as a precondition for Indian feminist jurisprudence because, for the progressive forces of feminist jurisprudence which largely deals with the issues of women's victimization and gender violence, it's high time to accommodate the religious plurality and politics of differences within the legal framework while challenging the gender neutrality of law and constructing a new feminist language of the law.

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