The Question on Democratic Values: Constitutional Secularism and the 'Dignity' of Indian Muslim Women

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Abstract:

Throughout history, women of vulnerable and minority communities have been treated as a tool for suppression and subjugation of the minorities by the majoritarian. Furthermore, within the social, political, and cultural ambit, women's attitudes, ideas, attire, and thoughts are always the source of contention regarding space, dignity, and rights. To steer clear of several repression against the minorities, the Indian state has chosen "constitutional secularism" as its tutelage to safeguard the minority community. However, with the recent political developments, the idea of Indian secularism remains contested, and the women of the Muslim minority community in India remain the most vulnerable. To understand the manifold crisis of secularism and its impact on women, the paper explains the occurrence of recent political and legal developments. For the former, the paper explains the case of the Indian state Karnataka where a single piece of clothing projected an astounding power to halt the whole education system focusing on the question of religious pluralism and constitutional rights. However, the trajectory of legal developments can be traced by contemplating the objectification of women by the state institutions overriding religious laws through legislative power, rooting gender-based violence, and the multiple 'intentions' for interpreting judgments within religious freedom. The paper juxtaposes the judicial institutional interpretation of religious laws and the hijab controversy, highlights constitutional secularism's selective/contextual interpretation, and questions the secular ethos laid in Articles 14, 15, 16, 21, 25, and 26 of the fundamental rights of the Indian constitution. Further, to analyse the question of the dignity of Muslim women within constitutional ambit, the paper traces the debate on constitutional secularism from the judgment of the Shah Bano case (1985) and the introduction of a bill in the parliament that exempts Muslim Women (Protection of Right on Divorce) Act 1986, abrogated the limited right to maintenance under Section 125 of the criminal Procedure Code (CrPC), and to abide by the personal law to appease the Muslim minority. Based on the above contextual understanding, the paper will comprehensively discuss the historical underpinning of the secular ethos within the Indian constitution, rooted in Gandhi's idea of *Sarva Dharma Sambhava* (Equality for all) to the fundamental rights guaranteed to all citizens in the Indian constitution.

Nonetheless, discussing constitutional secularism, the paper contemplates several questions; firstly, to what extent can the state interfere with personal law when an individual's identity is connected with religious identity in India and protected by the fundamental rights under Articles 14,15 and 25? Secondly, even if the state institutions interfere, can the laws impact the core integral elements of the religion or culture in the public space and institutions, as recently witnessed the changes in the Karnataka's education system. If so, to what extent? Thirdly, how does contextual secularism create a dichotomy to protect and undermine the existence of minorities in a majoritarian society by submerging it with the Uniform Civil Code? It will be discussed through Bhargava's contextual secularism by comparatively analysing the judgment of both the Shah Bano case, Triple Talaq and the Hijab controversy to deal with the complexities and understand the ethos of Indian constitutional secularism. Fourthly, how has the objectification of women and political suppression undermined democratic values and the right to dignity, further limiting the coexistence of religious pluralism? And Lastly, the paper emphasize a better way to establish the norms of toleration, liberal precepts of autonomy, and extend the principles to cover group rights for religious coexistence.

Conceptual Framework: Locating 'Secularism' in India

The recent political development in the Indian state makes it imperative that we shed light upon the changes in the idea of Secularism in India. What, then, is the best way to understand the current manipulation of laws to marginalize women from the minority community? Here, we use the development of the term 'secularism' in the Indian state to trace the divergent horizons in understanding what goes wrong in framing Indian secularism as an Idealized model for minorities, especially minority women. To date, defining secularism has proven to be difficult due to the absence of a universally accepted term that can be applied either in theory or in reality. In a broader sense, the term "secularism" refers to a belief system that either generally disapproves of religion or, at the very least, promotes the concept that politics and the operations of the state should be kept distinct from religious practice. With a goal of inclusiveness, the concept has been brought to India to maintain a social order conducive to harmonious coexistence among individuals of various religious beliefs. However, originally as a western concept that rejects metaphysical and theological justifications and goals in favor of a more materialist, scientific understanding of the world and cosmos. For a country like India, where with huge diversity in religious beliefs, the closest analogue in western

conception, “separation of church and state,” was a complex thing to address during the constitution-making and yet remains the same.

The Indian constitution maker tries to define and protect the ‘religious right’ under the ambit of fundamental rights in the Indian constitution, primarily under Art. 25, 26, and 29. However, the word secularism itself has not found any space in the original Indian constitution in the first three decade since Independence. Though labeled as an issue of high importance, the debate in the constituent assembly on secularism itself remained at the margins. It was inserted later in the Indian constitution with the 42nd Amendment of 1976. Prof. K.T. Shah, a constituent assembly member, tried twice without success to get the word "secular" inserted into the Fundamental Law. His second attempt was a suggested new article that included the following clause: "The state in India, being secular, shall have no involvement with any religion, creed, or confession of faith." Shah claimed that the disastrous outcomes of communalism in India warranted an unabashed declaration of the state's secular nature. Nevertheless, the amendment did not receive much support and was quashed by the assembly and law minister at the time (Smith 2015: 193; Constituent Assembly Debate Vol. 7: 815).

Nonetheless, secularism has not been propounded in a social and political vacuum. The constituent assembly tirelessly debated the issue of religious upheavals. It has been continuously witnessed since the early twentieth century and formally after the Hindu Mahasabha Conference (1938) and Lahore Resolution of the Muslim League (1940) that the religious split in the nation has provoked violence and disruptions in the society. The partition event in this context remains crucial to understanding the trajectory of secularism as India, antagonistic to Pakistan, has chosen to build a secular state based on the equality of every religion, which was a herculean task to perform.

The Gandhian and Nehruvian Idea remains prominent at that time to frame the idea of secularism. Gandhi in Hind Swaraj has tirelessly discussed India's religious, linguistic, and cultural pluralism and its importance in uniting every religion to fight against imperial forces. Achieving independence for India and establishing a unified nation was central to Gandhi's life's work. However, in a society with diverse religious faiths, he realized that there is somehow a need to establish a wall of separation between religion and state. As early as 1909, Gandhi observed and declared in Hind Swaraj: *“I swear I will die for my religion. But that is my personal matter. The government has nothing to do with it. The state will care after your*

secular welfare, such as health, communication, foreign relations, money, and so on, but not my religion. That is everyone's personal concern."

In order to serve a greater purpose and to unite the nation despite its highly pluralistic nature, Gandhi highlighted the concept of *Sarva dharma sambhava* (equality of all religions). The idea was essential in uniting people of different faiths and galvanizing a large-scale campaign to secure India's independence. Given Gandhi's religious beliefs, the concept of *Sarva Dharma Sambhava* is not just a pragmatic guideline meant to bring people together but also a normative premise that acknowledges the relevance of religion in people's lives, which received a prominent space in the constituent assembly of India (Chandoke 2010: 335). On the other hand, Nehru was deeply anxious that the political passions of religious identities could inspire and interpret the idea of secularism as something else. He relied on his idea of Secularism in India based on *Dharma Nirpeksht*a and tolerance. He premises the idea of tolerance as a moral obligation of the majority. During the deliberations of the constituent assembly, he emphasizes his statement on secularism that "the future government of free India, I am certain, must be secular in the sense that it will not be linked with any religious faith but will grant freedom to all religious activities". Nehru remarked that putting up a secular state in this way was an act of faith. Especially for the majority, it was important to demonstrate that they could treat members of other faiths with respect and tolerance (Tambiah 1998). Later, Nehru's understanding of secularism was a driving force in enshrining the notion into the Indian Constitution, and it can be summed up as follows: Freedom of religion or irreligion for everyone, equal respect for all religions by the state, and the state's duty to avoid becoming "connected" to any particular faith reflected in the Article 15 (1), 25 (1), 26 and 27 of the Fundamental Rights in the Indian constitution. Because of this, secularism put to rest fears that a majority should be able to force its values on the state, no matter how big that group is or its beliefs. On the other hand, minorities would have special protection and the same rights as any other group (Chandoke 1999: 49). With this, the Indian definition of secularism added a new dimension to the word's original meaning, which now includes letting people practice their religion and treating people of all faiths equally. The constituent assembly primarily ratified Gandhi's Idea of *Sarva Dharma Sambhava* (Equality for all) and Nehru's emphasis on ***Dharma*** *Nirpekshta* and *Tolerance*. Despite 'Tolerance' frequent promulgation, the idea of toleration has never been emphasized in terms of how it may be used to deal with a crisis stemming from religious identities (Tambiah 1998: 424).

Under several fundamental rights and the Criminal Procedure Code (CrPC), including 125 and 127, the concept of secularism and the requirements to protect minority rights were left open to interpretation. The ‘Shah Bano Case’ broke out not long after the word ‘secularism’ was added to the preamble of the Indian constitution (discussed in the next section). Despite the fact that this was not the very first instance of its sort. It has reignited the discussion on secularism; the protest from the Muslim community resulted in the reversal of the judgment, and it has been argued that the passage of the *Muslim Women (Protection on Rights and Divorce)* law in Parliament will protect the rights and identity of Muslim women. The question of secularism has been highly politicized as a result of this episode, which has aroused fury among proponents of the Hindutva ideology. Instead of giving minorities specific protections, Hindu right wing generally argue that secularism should be based on the principle of 'formal equality’ or ‘equal treatment for all religions’ (Smith 2015; Kapur 1999). The notion of formal equality argued by the Hindu rights wing focused on similar treatment with all the religion, homogenizing the majoritarian attitude over the minority, paving the way for UCC. Since the Shah Bano case, the issue of Muslim women's rights lured their agenda into defending UCC (Uniform Civil Code) and making it applicable to Muslim minorities at the earliest.

Seeing the unrest vis-à-vis the idea of secularism in India which was already contested at the time of constituent assembly and didn't find space in the original constitution. We see several intellectual responses regarding the issue of secularism in countries like India. More or less, it remains a common belief that being a western concept, the idea was not a complete fit for a diverse nation like India. One of the first academic responses can be sensed in the writings of D.E Smith (1963), who claims that liberal democratic secularism is associated with three ideas: (a) individual rights and religious freedom; (b) citizenship rights and non-discrimination; and (c) the separation of religion and state. Smith (1963) claimed that the first two principles had been included in the Indian Constitution as fundamental constitutional values and as the basis for secularism. These two foundations, however, have been seriously undermined by the state's ability to meddle in religious matters. Smith claimed that the inability to divide religion and state was at the heart of Secularism in India's woes. Because of this, he reasoned, India had some but not all the characteristics of a secular state; thus, Indian secularism could be argued as quasi-secular. Subsequently, in 1964 V. P. Luthera contended that India could not be considered secular since there is no wall separating religion and the state.

Tragically, since the 1980s, India has experienced both a growing communalization of society and a growing communalization of polity, with various pogroms against minority communities in which the state was considered complicit. Seeing the societal upheavals, it should come as no surprise that academics question whether or not secularism has any place in India, given the extent to which communalism has permeated Indian culture and the political system. In this sense, we elaborate here on the ideas of a few scholars to delve deeper into the debate of Secularism in India.

Akheel Bilgrami referred to Nehruvian Secularism as "Archimedean," rather than being the result of discussions and debates within civil society among various religious and other communitarian groups, it is legislated a predetermined conception from beyond the socio-political struggle (Bilgrami 1994; Upadhya 2012). The idea of secularism which is contested heavily since its inception with the upheavals in society during 1980s scholars like T.N. Madan argued that the idea of secularism is a misfit for the South Asian subcontinent as "under the present conditions, secularism here is a generally shared credo of life is untenable, as a basis for governmental action is impractical, and as a blueprint for the foreseeable future is "impotent." Because the vast majority of people in South Asia are devout followers of some religious tradition and cannot distinguish between the holy and profane, a distinction that is essential to secularism. Eventually, already religion-based states in the sub-continent (Buddhism and Islam) will also hinder the Indian state in achieving its secular dream (Madan 1998).

Ashish Nandy (1998) believes Nehru intended to impose secularism that was rational and scientific from the West viewpoint on Indian society, which also serves as a base for his criticism of Nehruvian Secularism. The goal of removing religion from politics and increasing religious tolerance has been mostly unachievable. Nandy further elaborates that designing Secularism in India on the ethos of liberal modernity approach was problematic in Itself. As Nandy (1995) says, "crisis for secularism arises when modernization gives rise to religion as ideology while neglecting religion as faith, prompting the emergence of secularism as a response to this ideological threat. Demanding that people for whom religions hold tremendous importance remove their faith from the public domain because of the public/private dichotomy, so crucial to modern secularism, is insensitive at best (Nandy1995).

Another essential scholar to consider the debate of Secularism in India is Rajeev Bhargava, who, instead of being skeptical like Madan and Nandy, defines Indian secularism in a

different manner which he called 'contextual secularism.' According to Bhargava, the concept of contextual secularism follows the idea of ‘principled distance’, which is enshrined in the Indian Constitution, requires the state to keep religion out of some things, such as deciding not to have separate religious electorates, and to keep religion in other things, such as accepting personal laws. This is because the Constitution mandates that the state adheres to the principle of secularism. On the other hand, contextual secularism is always founded on non-sectarian principles that are in keeping with a set of values that make a life of equal dignity for everyone. This is in contrast to traditional secularism, which is always sectarian. Arguing the current context, even Bhargava concedes that sectarian issues have become increasingly salient in recent years, allowing religion to participate in politics where it should not and excluding religion from discussions where its involvement would have yielded significant benefits. It is impossible to dismiss the possibility that the majoritarian government will be able to advance its agenda if the current crisis of secularism continues. Contextual secularism in a place like India offers the concept of limited and selective governmental action to cope with religious difficulties, as opposed to rejecting or accepting a total western and pure definition of secularism.

Meanwhile, we consider India being a diverse nation; there are complexities to implementing secularism, but it is not worthless; thus, we also use the idea of contextual secularism to make India a religious tolerant space where the state should have a limited role in religious interpretation such as in personal laws case. However, it cannot be denied that the current majoritarian government exploits the constitution's ambiguities and uses it for its agenda. As Chatterjee (2007) emphasizes that secularism should be distinguished by its adherence to religious neutrality. In other words, the project of actively excluding religion from the public or political sphere must be implemented without favoritism. Clearly, the current government's neutrality can be questioned in the Shah Bano Case, Triple Talaq and Hijab Ban case, as their favoritism and adherence to religion can be seen in their arguments against the Hijab ban.

Shah Bano Case and the Question on Secular Ethos:

The Shah Bano controversy involved a divorced Muslim women, seeking right to maintenance from her husband Ahmed Khan under Section 125 of the CrPC. Later Khan took the case to Supreme Court, demanding the relative of the Shah Bano to take her responsibility. Ahmed divorced her through the Triple Talaq methods of unilateral divorce, the least approve method of divorce in Islamic law. He proceeded to the supreme court arguing the lower court

ruling violated his rights as a Muslim by inhibiting his adherence to the Shariat Act, 1937. However, Chief Justice Y.V Chandrachud delivered the opinion in the court, upholding the lower court rulings. Seeking to circumvent a personal law they considered "ruthless in its inequality". The Supreme court ruled that Mr Khan has violated section 125 of the CrPC, which decree that "a person who, having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself" can be forced to do so by the court or face a fine and/or imprisonment. The All-India Muslim Personal Law Board intervened on the behalf of the Mohammad Ahmed Khan and took the issue and the ruling not only as the violation of the constitutional rights as a religious minorities, but also the language regarding Article 44, which they said would subvert the practice of Islam to its eventual disappearance in India. Chandrachud expresses his belief that "interpretation of law, personal or otherwise, is not only the function but the obligation of the court". The issue was heighted by the Hindu right wing discourse, who insist on utilizing the secularism on the removal of the Muslim privileges and the enactment of a Uniform Civil Code based on the secular ethos of equality for all religion (Oglesbee 2015:3).

The unwillingness of the government led by Rajiv Gandhi, by implementing Muslim Women (Protection of Rights on Divorce) Act 1986, to enforce the equal rights of Muslims women in the case of Shah Bano case represented the monumental failure of the government to protect the rights of the individual citizens. Social equality was undermined by the religious politics and secularism made women a tool for the religious communities to alter the Indian constitutions. The Shah Bano case evoked a tremendous response among the almost every citizen of India and reinforce the principle that secular nations like India cannot allow religious communalism to distort their commitment and democracy. The absence of the uniform civil code enabled the political conflagration that became the Shah Bano Case, paving for the debate of UCC and introduction of the Muslim Women (Protection of Rights on Divorce) Act (MWA)1986. Moreover, the rigidity of Muslim leadership pave way for the Hindu right wing forces in concretizing their anti-minority agenda and to propose their way for majoritarian roots. The ranging controversy compel Shah Bano to declare renouncing her claim, strengthen the popular misconception that Islam undermine to the economic rights of the women (Agnes 2007: 308). The MWA was the first attempt to codify the Muslim personal law imprinting an historical landmark within the secular ethos of the Indian constitutions. However, the act met with the protest from various women progressive groups challenging its constitutionality rather than examine its viability (Agnes 2007: 309).

Law is not merely a status; it's the essence lies in the way it is unfolded in the court. The words can have its life when debated, contested, interpreted, and validated in the court room. In 1988, the court engineer the women's right through innovative interpretations, ushering new set of rights within the established principles of the Muslim law (Agnes 2007: 311). The claim under MWA does not operate undersection 125 of the CrPC, the original provision under which Shah Bano case was awarded maintenance.

Thus, the struggle of Indian Muslim women undermined within the cultural construction of the hegemonic values. The MWA Act 1986 provided a reform that denied Muslim women under section 125 of the criminal procedure. It was glossed as the determination of entitlement upon divorce rather than prevailing right to recurring maintenance. Thus, even if the poor Muslim women is looted gutted in the communal riots, killed, or raped, the mainstream continued to implement those policies that undermine the basic "dignity" and right of "self-determination" to Muslim women, as evident in the case of Muslim Women Act. The undermined contextual secular ethos, or the politics of inclusivity and exclusivity in the secular ethos of the constitution became the tool or a means to undermine the basic dignity of Muslim women, and paved way to designate or incorporate the majoritarian or appeasement politics (Agnes 2007: 312-313).

In the hindsight, Shah Bano case escalated the controversy for the demand of UCC in 1980s over the reform of the personal law. The government eventually passes Muslims women's (Protection of Rights on Divorce) Act 1986, which robbed Shah Bano and the entire Muslim women community of the limited rights to maintenance they would enjoy under the secular law and threw them lack into the Muslim Personal Law (Kapur 1999: 148). However, within Hindu right-wing discourse, the demand of the UCC is all about secularism. The Hindu right wing insist that all women must be treated same, i.e., all Muslim women to be treated same as the other women. Any recognition of difference between women in different religious communities can be seen as the violation of the constitutional guarantee of equality. The enactment of the MWA is regarded by the Hindu right as another example of pandering of the minorities, and hence violating secularism (Kapur 1999: 149). Hindu right-wing discourse implies that all other religious communities has been secularised and that is the only Muslim and Christian who are standing in the way of 'National unity and integration" (Kapur 1999: 149) as evident in *Sarla Mugdal* case in supreme court on polygamy in Hindu religion. Supreme court upheld that the second marriage will not be valid without dissolving its first marriage. One Judge commented on the need to enact UCC stating that Hindu along with the

Sikh, Buddhist, and Jains has forsaken their sentiments in the cause of the national unity, but other communities has not. This comment implies "that all other religious communities has been secularised, and that it is only the Muslim and Christians who are standing in their way of "national unity and integration" (*Sarla Mugdal* vs Union of India 1915: 331; Kapur & Cossman, Subversive sites, supra notes, 1 at 256). The judge language reflects Muslims as barbaric, uncivilized paving way for the rhetoric where "all religious communities have been secularized, and that it is only the Muslims and Christians who are standing in the way of 'National Unity and Integration' (Kapur & Cossman, Subversive sites, supra notes, 1 at 260; Kapur 1999). Thus, the UCC became the means for realizing the Hindu rights' vision of secularism – the formal equal treatment of all religious communities. While fighting for the enactment of the UCC, Hindu rights became the defence of the women's right withing minority community (Kapur 1999: 150). However, the question of codification in the name of uniformity, and integration, are subjectively used only for the minority community. The classical example is the saving of Hindu undivided family (HUF) property under the Hindu succession Act. The Hindu urban and rural properties class and the business class has gained maximum concession of tax benefit as an outcome. Any attempt to abolish the law under the guise of UCC will be opposed vehemently. Thus, the debate UCCC is confined to abolishing Muslim culture of polygamy, triple talaq, and recently on Hijab ban. The debate has turned blind eye to the sexual promiscuity and multiple sexual relations has been engaged by men in their own community (Agnes 2007: 314).

Triple Talaq and Self-Determination of Muslim Women

The current architecture of Islamic family law is a vestige of India's colonial past where the British recognize the personal religious laws of Muslims, Hindu, Christians, and other religious minority groups. Muslim religious law governing marriage, divorce, property is preserved in the Muslim personal Shariat Application Act of 1937, passed during the British rule. The act is recognized by the Article 13 and 372, to form the basis of the Muslim personal law. It moves towards the more uniform code, where government passed a series of laws that citizens can opt into that circumvent religious law on personal matter. For example, the special marriage Act of 1954 is a civil code for citizens to register their marriage voluntarily at the civil registries.

Eventually when MWA was passed exempting Muslim women from maintenance rights, AIMPLB played a significant role in cementing the Act, despite of being not officially

recognized by the state. Despite of the state recognition, AIMPLB remain persist with the parallel Muslims institutions that challenge their authority as they became de facto representative of the Muslim voice and work as a Muslim dispute resolution *centre dar-ul-qazas* under AIMPLB. It was challenge by the private attorney Vishwa Madan at the supreme court. However, it was dismissed by the court, considering it as an "informal justice delivery system with an objective to bringing about an amicable settlement of the matrimonial disputes between the parties. It is within the discretion of the person of the parties that who obtain Fatwa to abide by it or not". It was classified as an alternative dispute resolution mechanism. It did not challenge the authority of AIMPLB, but also emphasized as it does not have any formal legal status.

As for the practice of the Triple Talaq, the most cited case was of Shamim Ara, who filed a complaint against her husband Mr Ahmed for maintenance on the ground she was divorced. When the case reached to the Supreme court, they had to rule on the legality of the unilateral method of divorce. However, the court ruled negatively leaving the practice of Tiple Talaq as a non-state matter that should be resolved using available Muslim institution. They do mention the correct law of Talaq as ordained by the holy Quran. AIMPLB adopted a model marriage contract that echoed the courts recommendation in the Shamin Ara's decision, making it mandatory to approach the *Qazi or Dar ul Qaza* in case of marital discord after pronouncing divorce. The illegality of instant talaq was evident in Masoor Ahmed Vs State NCT of Delhi 2007, where the pronouncement of the triple talaq was not sufficient to effectuate a divorce and both the reasonable cause and attempt at reconciliation must be demonstrated. AIMPLB calls for the social boycott as a punishment for instant talaq, was not enough to establish the method of divorce as invalid. Thus, many judgments has been passes since then ruling on the invalidity of the triple talaq and the attempt of AIMPLB to recognize it as an detrimental effects. However, the legislature remained consciously silent and attempting to balance between the fundamental rights in the constitutions and the legal autonomy given to the religious group by the same constitution (Sohaira 2021).

> "In the landmark ruling of Shamin Ara, the Supreme court invalidated the arbitrary triple talaq and held that a mere plea of Talaq is in reply to the proceeding filed by the wife for the maintenance cannot be treated as the pronouncement of talaq and the liability of the husband to pay maintenance to his wife does not come to an end through such communication. In order to be divorce to be valid, talaq has to be pronounced as per the qur'anic injunction" (Agnes 2019: 344).

Besides Shamin Ara, there was plethora of verdict such as *Dagdu Chotu Pathan vs Rahimbi* 2002, *Sri Jia Uddin vs Anwara Begum* in 1981, *Rukia Khatun vs Abdul Khalique Laskar* in 1981, where Supreme court declared triple talaq invalid and safeguard the right of the women approaching the court for maintenance. Thus, such ruling set the backdrop of the decision taken by the supreme court in the *Shayara Bano vs Union of India case 2017*.

The Suo moto reference of the special bench initiated to examine discriminatory practice of Muslim law such as polygamy and triple talaq, was made by two judge bench comprising of Justice Anil Dave and Arun Kumar Goel in *Prakash vs Phulwati* in 2015. This referred to the chief justice to constitute a special bench to examine the discriminatory practices which violated the fundamental rights of the Muslim women. It was titled as a 'Re: Muslim Women's Quest for Equality'. Strategically placing minority based five-judge bench, to balance the colour of majority- minority community, as argued by Tahir Mahood (Agnes 2019: 337). However, the judge declined to examine the issue of Muslim polygamy and confined strictly to the question of Muslim Women. The hearing aroused huge public interest, involving many NGOs working with Muslim Women, more dominantly by Bhartiya Muslim Mahila Andolan (BMMA), who released a report "Seeking Justice within Family" examining the issues flagged by triple talaq and polygamy as their prime concern, overriding the concerns of poverty, illiteracy, and marginalization (Agnes 2019: 337). Triple Talaq became one of the national issue, despite of the fact that merely 1 in 311 noted to have used oral triple talaq, a miniscule minority in the Muslim community according to Sohaira (2021).

In the wake of 'Re: Muslim Womens' Quest for Equality to the Justice' was made, BJP activist Ashwini Upadhyaya filed a petition pleading for the enactment of a UCC. The Petition presided by Chief justice T.S Thakur was dismissed on the ground that issue falls squarely within the domain of legislature. However, the court assured that is the victim of the triple talaq approach the court, it would examine whether instant or arbitrary talaq is the violation of the fundamental rights. In the Shayara Bano case, she received *Talaqnama s*ent by her husband through post gave the opportunity to the right wing of being the messiah of the Muslim women to the Hindu right wing. Despite of Bano's stance to not to return to her husband's home, the whole debate shifted to the legality of the Talaq, and the discrimination of the fundamental rights of the women. The concerns such as access to her children, regular monthly maintenance, and fair and reasonable settlement for the future, issues which has been litigated in the local magistrate court under relevant statues, the Domestic Violence Act (DVA), MWA and other act took the backseat without any serious consideration.

The growing selective amnesia against the Muslim women over the decades and the growing islamophobia, the hype around the issue of triple talaq heightened and sustained. Ignoring the multiple verdicts by supreme court safeguarding the right of the Muslim women. Many Muslim women organization espoused that the supreme court must declare the practice of the instant and arbitrary triple talaq as invalid. However, AIMPLB argued that the government should not interfere with the rights of the minorities to their traditions, culture, belief, and faith that they enjoyed in the Article 25 and 26 of the fundamental rights of the constitutions, which must be protected by the court.

However, instead of striking such practical notion of the laws, it was exploited by the Hindu right wing and transformed into a minority bashing exercise by BJP supporters. Within four months, a bill was introduced in the Lok Sabha to abolish Triple Talaq, and to enact a law with a penal provision as a deterrent. Further, to address the issue of triple talaq through various executive ordinance and bills were promulgated before the final bill was successfully passed in both Lok Sabha and Rajya Sabha. The Muslim Women Protection of Rights on Marriage Bill was passed in 2019, passed as an act of parliament. The act declares the triple talaq ineffective to declaring it a criminal act that is punishable by the state with up to three years' imprisonment and a monetary fine.

The major question rises by criminalizing triple talaq and potentially imprisoning men who pronounce it, women may be left in a situation in which their husbands are prisoned, and the women are unable to remarry and unable to secure financial support for their family leaving them potentially even more economically and socially vulnerable than before (Sohaira 2021). Moreover, the women who file the litigation are more ostracized and could find themselves in the situation that are religiously divorced but considered married according to the state. Thus, keeping the women in the paradoxical dilemma of the situation.

If the purpose of the bill to deliver gender justice remain unchanged, what was the reason behind the who Act to be passed so rigours., especially utilizing executive ordinance. The answers lie in the right wrong manifest to propose its goal for UCC. The emphasis was on the on Article 44 of the DSPS that focus on the "duty of the state" to establish a uniform civil code (Sohaira 2021). Thus, the overall procedural codification of personal law failed to provide the gender justice to all the women with adequate education and health care for rural women, and justice for the victim of sexual violence.

The Question of Constitutional Values and Hijab Ban

In February 2022, the educational institute in Udupi decided to ban Hijab for Muslim women in the college. A decree that Muslim girls can wear hijabs in private spaces but not in schools/colleges because they are public spaces. It question the secularism idea of *Sarva Dharma Sambhava* or equal treatment of all religion and violate the right to education (Mandal 2022). However, the 78% of the population has the idea of equality as the majoritarian domination of Hindus. For instances, Saraswati Vandana and the lighting of the lamps, or Hindi language courses are laden with Hindu religious text or breaks a coconut while inaugurating. These practices and traditions are never questioned even in a government-run education. The ban was based on the Section 133(2) of the Karnataka Education Act, under which in the Indian constitution, the individual state has the right to make their own education policy. The protest was countered by the saffron scarf to support the Hijab ban. Karnataka high court dismiss the petition against the state ban on wearing of any religious covering. Thus, Karnataka high court did not provide any interim relief to the petitioner, forcing the petitioner to the Supreme court. In the Karnataka High court, the advocate general argued that hijab was not an essential religious practice which justified the ban. The argument was problematic as it came from the male layer without citing any reliable sources, while many Muslims argues Hijab as an integral part of their religion. The Supreme Court, when developing the doctrine of essential religious practice, has also stated that 'in order for the practices in question to be treated as a part of religion they must be regarded by the said religion as its essential and integral part'. This implies the right of the religious community to determine what constitutes an essential religious practice, again raising the question of whether the Court or a legal argument by a lawyer can override that practice. However, the State also argued that the Hijab does not fall under religious freedom but under freedom of expression, which is subject to institutional restraints. The reason given was that because wearing a Hijab is an 'option', it is not obligatory and therefore not 'essential', which takes it out of the area of 'essential religious practice'. "Regardless of whether this wordplay was intended to make a legal point (which it fails to do), it makes an assumption by interpreting the tenets of Islam in a very specific manner for the sake of the argument. Finally, it is important to acknowledge that the question is not just of whether the Hijab is an essential religious practice but why it is being subject to so much moral and legal scrutiny, in effect restricting the participation of many Muslim women in educational institutions" (Mandal 2021). The court held that wearing hijab is not essential religious practices. However, Muslim women argue wearing Hijab as a part of their right to religion expression as the basic fundamental rights, according to Article 25. It is an essential practices according to the

Islamic scripture and is an indispensable aspect of their religion. Thus, the state cannot impose restrictions on this essential religious practices. The Karnataka High court argued it as a cultural practices rather than the religious practices, and cannot be regarded as the quintessential aspect of the religion. Further the bench refuges to direct a disciplinary enquiry against the principal and teacher, who prohibited wearing the hijab.

By banning Hijab, the state has infringed Article 21-A which guarantees free and compulsory education to all and to balance them with the right to education. Despite of awareness of the marginalization of Muslim women in the education sector, the high court dismissed the plea against the hijab ban in the educational institution. The language of the high court internalized the discrimination, devoid the Muslim women to wear hijab at the educational institutions. Thus, the such statement undermine the faith of the minority community in these institutions to protect their rights against arbitrary state action. The discriminatory arbitrary and unconstitutional restriction on Muslim female students limits their fundamental rights of the freedom of expression and right to education. Such political scenario unfolded the discussion of the women activist to engage in the multifaceted question. To what extend one can ban the religious symbol that has an adverse effect on the whole community? Does banning religious symbols justify the discriminatory of one religion over the other in particular? How the whole process has been increasingly causing religious tension in the minority community with regard to the respect and inclusion in the secular democracy.

While analysing the question of secular practices in Indian constitution, women has been the centre of the communal debate and controversy and a way to debate and reconcile secular democracy. Women has always been utilized as an instrumental tool to fulfil either majoritarian or the appeasement politics, undermine the secular ethos and paving the way towards UCC. The question of women right to freedom of expression, right to education, legal and other social right always takes a backseat with an aim to fulfil male dominated majoritarian or appeasement politics.

Discussion:

The current majoritarian government is trying to employ and interpret the constitution to benefit their majoritarian agenda, which has been left ambiguous in the original constitution and the Shah Bano case provided them a threshold to portray how inequitable the UCC and why it becomes necessary to employ Art. 44 of DPSP which says, *"The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India* ."Subsequently,

the state, in an attempt to be a superficial sympathizer for Muslim women's rights, portrays the Hijab as repressive and patriarchal without being reasonable or taking into account the perceptions of the girls who want to wear it in their 'individual autonomy' and 'as their choice,' which is also a part of their fundamental right under Art. 25. By simply simplifying their arguments, the majoritarian government in India assert that the laws like 'Triple-Talaq' and 'Hijab Ban' will be a road to triumph in order to empower Muslim women and release them from orthodox and fundamentalist demeanor. The state's unwillingness to examine the perspective of affected women before reaching a verdict is indicative of the majority's desire to repress the Muslim identity by using women as a tool. It is against the political backdrop of Muslim being pushed to the status of second class citizens that we must examine the issue of Triple Talaq raised by the mainstream media and the government's eagerness to reform the Muslim personal law to secure the right of the Muslim women. While the lynching of Muslim does not arouse public conscience, triple triple, which hit the headline around the headline the same time, witnessed unprecedented media publicity.

Further, the prioritization of the gender has resulted in the polarization of the religious communities, a splintering of women's identity into unconnected meaning less fragments and open the space for secular politics in saffron colour. However, secularism is vision as a substantive notion of equality, where one's gender and/or religious identity is not merely erased by brute majoritarianism but recognized and compensated if it has been the cause of historical disadvantaged (Kapur 1999: 151). The insecurity of Muslim men to preserve their religion emerged with the tool of Muslim women, arguing as their rights has been contradicted with their fundamental right with the freedom of religion. Rajiv Gandhi uses this tool of Muslim Women Act to protect and appease the Muslims within the secular discourse.

Again in the context of Hindu right wing, they argue the significance of the secularism as an equality of all religion in the formal sense. Where every religion needs to be treated equally, that is within the dominant domain of the majoritarian (Oglesbee 2015: 5). Zoya Hasan, chairperson of the committee for the protection of the of rights of Muslim women pointed out that "In the guise of freedom of religion, Muslim women were being denied constitutional and human rights." When communal identity conflict with the duties of the citizenship, it is the identity that must adapt. Personal law necessitated the mutual exclusivity of the individual as both Muslim women and Indian citizens, and in India it is only Muslim who are allowed to maintain personal laws. Zoya and Menon pointed out that it indicated that but not enforcing

equality, the government facilitates inequality. Thus, the current political demands a more nuanced and pragmatic approach to address these injustices through multiple mechanism available to Muslim women, both judicial and community based, rather than flaunting the violation, totally out of the context, as a whip to beat the community with, as though gender injustice is the exclusive prerogative of Muslim men (Agnes 2019: 351).

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