

# A Crisis of Rights in India: ‘Womanhood’ over Citizenship

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Indian women don't have a history of a suffragette movement for the right to vote. Formal equality came with the Constitution of the newly independent nation state of India. But the journey of women as citizens and subjects has had a unique and interesting trajectory in India. Women's movements in India post-independence have focused on issues like rape, dowry, working towards increasing women's participation in the 'public'; Indian women's movements have tried to look at the various aspects that are responsible for the continued oppression of women and denial of their agency and rights. And we have come far. Discourses around women's rights have penetrated politics and activism in India. In the past few decades, the changes in laws as well as the increase in the social presence of women are markers of these continuous struggles and negotiations with the nation state. And yet, we live in an age where the Indian judiciary, the upholder of the laws of the land makes us question not only what all these struggles brought in the end, but how much relief fundamental rights can provide to 'secondary citizens'.

I wish to shed some light on the extremely different ways in which the society has understood different men and different women as subjects and citizens, and how that has also affected the judiciary. Another issue of importance I wish to address is the idea of the judiciary existing outside of the 'social' (and the 'religious'), and how it is perceived as a secular, rational body making decisions in isolation of their context, which is not accurate, to say the least.

Not too long ago, the High court of Kerala annulled the marriage of a woman, Hadiya, who had converted to Islam and later married a Muslim man. The court favored the grievances of the complainant who were her parents, and ordered the police to forcibly take her back to her parents' home. Here, the court is hearing the case of an adult, consenting couple who have married each other according to the rituals prescribed by the religious personal laws of Islam, and decided to talk about the importance of the institution of marriage with regard to the involvement of parents instead. The judgement of the Kerala high court defies almost every fundamental right guaranteed to every Indian citizen by the constitution of India. Upon reaching the Supreme Court, a case that should've been dismissed was actually legitimised by an order for it to be investigated by the NIA (National

Investigation Agency). The court will hear this case after the investigation. Till then, Hadiya is locked up in a room, screaming and fighting with the very people she had walked away from, and a home she had chosen to leave.

The judgement also brings to light the concept of 'Love Jihad', a pervasive and popular idea that Muslim men are luring 'impressionable' Hindu women into marriage for converting more and more Hindus. There is no real basis to this, except the fact that inter-religious marriages are taking place around the country and this is not sitting well with fundamentalists on any side. This also infantilizes adult women. The women who are getting married and converting are all adults who should ideally enjoy the freedom to profess a religion of their choice and marry who they like. Somehow, with the convolution of religion and womanhood, they are first the markers of the community, its honour and prestige. Their 'ownership' by men of another community would violate this prestige, and so we see violent responses to men and women of different communities wanting to get married. This response of course varies. The man is characterized as a virile, dangerous hyper masculine figure, whereas the woman is childlike, impressionable, and incapable of thinking or making decisions for herself. These responses are based on gendered roles assigned to men and women in communities, and the ideas of weakness, sentimentality, and incapability associated with women. The judiciary which should recognize women as citizens and protect their rights are themselves entrenched in patriarchal societal norms that identify women as extensions of their community and male-headed family units.

The judgement of the Kerala high court (which is not the first of its kind) makes it abundantly clear how invested the safeguards of our laws are in maintaining these boundaries. The High Court is highly skeptical of this (23 years old) woman's reasons to convert, and then, of her marriage. It then says that she isn't capable of making the 'most important' decision of her life which is marriage, and that this should be done with the involvement of her parents. This judgement feeds into essentialisms of womanhood, marriage and its importance in women's lives as well as ideas of community and morality that one would not expect a secular, rational body like the judiciary to fall into in this age and day. But the truth of the matter is, this judgement isn't unique, nor is this problem limited to a region or religion. This judgement has defied several of the fundamental rights guaranteed by the constitution to every citizen and laws regarding marriage (Special Marriage Act, Muslim Marriage Act, Hindu Marriage Act etc). This judgement seems to primarily care for the "sentiments" of the Hindu parents trying to protect their daughter from the seemingly invented problem of 'Love Jihad'. This judgement illuminates the willingness of the court to sacrifice women's rights for the wishes of a community she does not even wish to belong to.

On the other hand, the judiciary ostensibly seems to uphold the equality of sexes while making a judgement on triple-talaq which was a legal process of availing

divorce under the Muslim Marriage Act in India. Women's groups welcomed this decision, but after a closer reading of this judgement, one can't help but be wary of what it entails. The concern of the bench was not whether or not this practice curtails rights of women or exploits them, but its legitimacy within the Muslim Marriage Act. In fact, where the court should have declared the fundamental rights as preceding the religious personal laws, it went into the direction of becoming a place where religious laws decided the case. Though the bench banned this practice, when the spine of the judgement talks about religious rights without giving much regard to the aggrieved women as citizens with rights of their own, one can't really be sure what to expect of such a decision.

We exist in a time where we are constantly reminded of the progress women have made, and all that has been done for them, and if we complain, we are bad women asking for too much. It is difficult to articulate where we are. While our struggles continue to bear various results and we bring changes to sexist laws and attitudes one at a time, there really is a larger question to be looked at here: are women truly equal citizens of this country? Battling social norms is still one thing. We know there is a long struggle ahead of us, and we are prepared. But what do we expect of this 'neutral', 'rational', 'secular' nation state and judiciary which time and again display their inherent biases? The judiciary is made up of living, breathing people. So is our government. When those who represent us don't regard us equally, how do we expect a book to protect us?

The judiciary has never been neutral. Neutrality is perhaps impossible to expect and imagine. When the breakages are so clear, how do we not see the differential citizenship accorded to women? A government and a judiciary that legitimize women as locations of exerting communal control and marking boundaries will not protect women's rights and interests over and above them. There is a crisis in the practice of the constitutional concept of citizenship. The breaks and inconsistencies become more apparent when the subject/citizen is the 'other': woman.



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*References:*

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