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## **Ruptures and Continuities: The 'Women's Question' and Cultural Entanglements in Colonial and Contemporary India**

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### **Abstract**

*This paper examines different trajectories of the women's question, which has been entangled in the crossfire between socio-cultural reforms and conservative, community-oriented revivalism. Since the 19th century, the women's question became the battleground for social reformism, orthodox nationalism, and the colonizing mission of civilization. So, to dig into the contemporary 'aporias' of the women's question in India, it needs to be historically analysed through the 19th century intersection of religion, gender, and cultural nationalism. The question of women's rights or agency was compromised by the nationalist forces and the Hindu orthodox religion following the socio-cultural reforms around the 'sati tradition' or widow immolation, widow remarriage, and the 'age of consent debate', etc. While social reformists corresponded to such religiously sanctioned practices as cultural persecution, orthodox religious and cultural nationalists projected such customs as a unique rhetoric of national culture pitted against Western culture. At the end of the nineteenth and the early twentieth century, the nationalist revivalist forces successfully pushed the women's question into an inner domain of discourse. However, this paper will analyse how this tension between two dimensions has persisted and spilled over into recent debates in the post-colonial phase. The new postcolonial nation has to ensure the rights of women, as it promised equal rights to each and every citizen, but in the newborn nation, women's rights issue is challenged by the same strain of unresolved negotiation between popular demands of revivalism versus right-based entity of reformism, where the secular state needs to address this dilemma of recent socio-religious controversies. For example, the controversial judgement of Shah Bano case, the court case on the death of Roop Kanwar as alleged 'sati', controversies regarding lifting the ban on menstruating women's entry in the Sabarimala Temple of Kerala or the notorious coinage of the term 'love jihad' by Hindu ultra nationalist forces to launch a campaign to coerce the conjugal rights of women etc. Therefore, this article will briefly examine how the women's question was debated and discussed in the Hindu Code Bill for the protection of women's rights, and whether those promises were diluted in the tug of war between revivalist community identity and constitutional identity protected by the modern secular state in the post-colonial nation. For doing that, the paper would reengage with the women's question, investigating whether the contemporary instances of the Sabarimala Temple Entry ban and the viciously constructed idea of Love Jihad are deepening traditional Hindu patriarchal values of gender subservience.*

**Keywords:** Ruptures, Continuities, Agency, Hindu Code Bill, Sabarimala Temple Entry Ban, Love Jihad, Hindu majoritarian nationalism

## **Introduction:**

In 19th-century colonial Bengal, the women's question was entangled with the new politics of anti-colonial nationalism. Contemporary issues of gender or the women's question and its challenges are embedded in the 19th-century debates around various socio-cultural or socio-legislative reforms surrounding widow immolation, widow remarriage, and the age of girl child marriage. On these grounds of social reforms, the women's question became the 'political encounter between a colonial state and the supposed tradition of conquered people' (Partha Chatterjee, 623). The cultural nationalists, in a way to protect or to demarcate a political position opposed to colonial power, assumed the hegemonic texts of Brahminical strictures, which sanctioned widow burning and other vicious practices without questioning the problem embedded in the tradition. Women became the distinctive cultural identity on which national culture asserted its self-identity, without considering the repercussions that such vicious customs would have on women. On the other hand, social reformation through legislative dictates was at hand for saving the women from cultural persecution. However, after independence, the post-colonial state proclaimed equality as a fundamental right for every citizen and prohibited discrimination, as guaranteed by the Constitution. The decades following Indian Independence were not particularly vibrant for women's mobilization. During the 1920s to 1940s, many women were apparently gratified by the constitutional provisions and welfare reforms of the welfarist state. But the real face of progress and the promised allegiance came into question with the publication of *Toward Equality* (1974), a report on the education, employment, and social status of women by the constitutional, legal, and administrative provisions. It is the first official document of a committee appointed by the Ministry of Education and Social Welfare, which declared that the promised equality and justice guaranteed by the constitution had not been fulfilled. Even the authors of this report charged that women's status had not improved but had in fact declined since independence (Geraldine Forbes, 227). From 1970 to the 1980s, women's protests emerged with the issues of dowry, rape, poverty, and other forms of violence. In the 1990s, their movements were suppressed by the dominant discourse on poverty in the face of globalization and neo liberalization. A new awareness of women's role or identity and problems erupted in the protest dynamics when issues like 'gender inequality' began to question the role of some religious norms, traditions, and practices, which are intertwined with the notions of patriarchy and its identified relation with the state. The constitutional assumption of being secular came under question in 1985 with the controversial judgement of the Shah Bano case. Shah Bano, a divorced Muslim woman, was granted financial assistance by the Supreme Court, but the decision was annulled since the Muslim community challenged it on the grounds of interference into community rights and law. Again, in 1987, Roop Kanwar, an eighteen-year-old woman, was burned to death with her husband's corpse in the village of Deorala, Rajasthan, and it was celebrated as the holy practice of committing 'sati'. The Sati Abolition Act was passed in 1829, but even decades later, some militant revivalist groups worshipped this act and spotted the pyre as a reverential site in the name of tradition. Though individuals can choose secular alternatives, personal law in India falls under the purview of religion. Thus, the women's question got ensnared within this tussle between reformist tendencies and revivalist efforts to bring back traditional modes of gender subservience with a religious undertone in the

19th century, which spilled over to the post-colonial phase as a negotiated tension between ethnic homogeneous cultural identity and the liberal constitutional principles of the modern democratic state. Therefore, this paper, in the first section, will engage briefly with the reading of the women's question in 19th-century public debate. The Second section would deal with the agenda of social reform for women and Ambedkar's intervention. In the third section, I would try to unravel the dangers of the revivalist rise of ultra nationalist forces by questioning the present vicious narratives of 'Love Jihad', an alleged campaign of the right-wing Hindu fundamentalists who deny the agency of women at the forefront. Lastly, my paper will explore the contemporary controversial issue of the Sabarimala Temple Entry ban for menstruating women, which denies women of their rights on the basis of the religious faith of the community, which again feeds the interest of cultural nationalists.

### **The Women's Question in the 19<sup>th</sup> Century Public Debate:**

To understand 'the women's question' within the negotiated relation between revivalist and reformist tendencies in contemporary times, we need to revisit history to examine its entangled relationship with complex issues of religion and nationalism in the Indian context. In the 19<sup>th</sup> century, Indian nationalism emerged as a feature of the victorious anticolonial struggles. Partha Chatterjee, in his book *Nation and Its Fragments* (1993), argues that the Indian form of nationalism cannot be reduced to a mere political battle in which conventional histories limit themselves; it began well before the political movements against imperial power. It divides the world of social institutions and practices into two categorical spheres— 'the material and the spiritual'. In the 'material or outside' domain, Western superiority and its acknowledged accomplishments in science and technology had to be replicated. On the other hand, 'the inner or spiritual' domain needs to bear the 'essential' marks of cultural identity from where the fundamental feature of anticolonial nationalism takes its birth. Interestingly, this dichotomy of 'ghar' and 'bahir' played a crucial role in the women's question within nationalist discourse. From a nationalist point of view, 'ghar'/home is the principal site of 'expressing spiritual quality of the national culture,' and women must bear the brunt of protecting and nurturing this quality. Women's voices were already impaired by both colonialism and nationalist patriarchy. The subjectivity of women was controlled by the cultural nationalists and the Hindu orthodox religion in their hands. Religious reformism, orthodoxy, and cultural nationalism are involved in the unquestioning acceptance of tradition and culture through the rejection of Western culture. Any kind of 'social reform' was made up of two distinct phases, as argued by Partha Chatterjee. First, Indian reformers relied on colonial authorities or state action to reform traditional institutions and customs. Secondly, a strong resistance to allow the colonial state to intervene in matters affecting 'national culture', though the need for reform was not disputed. Strangely, this is reinforced by the colonial state unless it violates its own sacred texts and time-honoured customs written by Brahmin Pandits and Maulvis. Holy Scriptures promised that 'sati' would reside in heaven with her husband for millions of years, and those who would watch the holy spectacle (burning alive) would gain some excellence. In this way, through the assertion of valid immolation in the scriptural condition, women gained the first legal right to their consent against death. Tanika Sarkar, in her article "A Prehistory of Rights: The Age of Consent Debate in Colonial Bengal," argues that while the issue of widow immolation was about her physical

survival, the issue of widow remarriage was about her sexual death. In the 1890s, a huge controversy sparked in the press and public sphere over the issue of child marriage when an eleven-year-old girl, Phulmonee, bled to death from marital rape by her husband. In 1891, Indian reformers persuaded the colonial government to raise the minimum age of consent for married girls to twelve. Cultural nationalists and Hindu orthodoxy at that time opposed the consent bill in arguing that it actually violated the fundamental life cycle of the Hindu rite "garbhadan" (obligatory practice for a girl to have intercourse with her husband within sixteen days of her first menstruation cycle). Therefore, the women's question fell apart in the tug-of-war between reformist groups and the orthodox revivalists. In the subsequent section, I shall show how recent debates on aligning women's individual rights with religious affinity were reflected in the conception phase of the Hindu Code Bill.

### **Hindu Code Bill and the Women's Agency:**

The Hindu Code Bill controversy, which continued from 1941 to 1956, was a transformative moment in Indian history that sought to grant rights and agency to Hindu women. This can also be seen as a significant shift from a community-oriented scriptural framework to a legislative initiative that codifies a uniform set of rules for Hindu women in general. There was no uniformity in personal laws in India, as they differed by caste, class, and religious affiliations. They were rather codified through community-specific cultural rules, which were essentialized through various customs, smritis, and *shastras*. In most cases, they are derogatory and violative of women's fundamental rights. Co-existence of traditional inequality and constitutional equality is not possible. Gender inequality has been at the centre of all religious, political, social, and cultural identities. The imposed discriminatory norms and measures sanctioned by the religious institutions (such as women having no legal right over the absolute autonomy on property, marriage, divorce, etc.) are examples of violations against women's democratic rights. In ancient Indian society, there was a system of giving some property (mostly at the time of marriage) to women known as *Stridhan*. After her husband's death, if she led a pious life, she would receive an endowment, such as jewellery. Otherwise, she will lose everything if she marries a man of her own choice without the family's consent. In case of divorce, too, she would gain nothing of her property anymore. Thus, Hindu patriarchal society considers males as the actual successors of the lineage; they have the rights over the property, and as women move to another family, they cannot safeguard the property within the family itself. So, they were refuted from their property rights. There were two types of laws in Hindu culture regarding inheritance, marriage, adoption, etc., namely, *Mitakshara* and *Dayabhaga*. In *Mitakshara*, the property of a man belongs to the male coparcenaries, such as father, son, grandson, etc., by birth. Under *Dayabhaga*, the individual character who inherits property from the progenitors has an absolute right over the property, but this again discriminates among female heirs (married/not married, having children/not having children), and even they cannot sell it to anyone. Earlier, the Hindu Law Committee established a clear body of codified laws for two forms of marriage: 'Civil' and 'Religious'. Basically, these two forms of marriage are bound up with upper-caste Brahminical Hindu identities and regional Hindu identities in a more complex way. Religious ceremonies are based on *saptapadi* rituals (marital vows taken in seven steps together), and the civil marriage ceremony is based on the Special Marriage Act of 1872

(enacted in response to the demands of the Brahmo Samaj). This Act prohibited relationships within a couple of nearer relations, which was customarily followed by Bengali Hindus, but these inter-cousin marriages were common in South Indian Hindu communities and Muslim communities. Therefore, the Hindu Law Committee's regulation on the marriage prohibition between sapindas (a specific term used in the Smritis to define cousin relations) is highly problematic for the secular measure for everyone. This Committee did not sanction inter-caste couples to have sacramental marriages, but no such regulation was in place for Civil Hindu marriages. In order to remove upper caste domination of the Hindu Law Committee, Ambedkar took over the project of the Hindu Code Bill to abolish the restrictions of inter-caste marriages of all Hindus, allowing any caste and sub-caste to marry either by civil or religious marriage rituals. Ambedkar's argument on exogamy defines that 'a Hindu couple could marry under the civil part of the Code Bill regardless of their *sapinda* relationships' (Komal Rajak, 2020, p.185). Agendas of women's rights have been started since the colonial period, when, for the first time, Hindu widows were granted the right to claim a share in their husband's property in 1937. After three years, the British Government formed the B.N. Rau committee in 1941 to examine the status of women's rights to property in the subcontinent, and the committee reported two bills – the Hindu Marriage Bill and the Intestate Succession Bill. When the bills were introduced in the central legislature, vehement opposition from conservative Hindus led to their eventual withdrawal in 1943. In 1944, efforts were made to reintroduce the bills, which were restructured into a draft code known as the Hindu Code Bill. The bills were again produced in the parliament in 1946, but were not acted upon. It was Ambedkar, as Law Minister, who introduced the draft bill of the Hindu Code in the Constituent Assembly on 11th April 1947, in the true sense of the term. He, as the chairman of a select committee and 16 other members, attempted to codify certain branches of Hindu law and presented a report before the Constituent Assembly in 1948. He drafted the Bill in such a way that he could avoid the influences of the Dharma shastras and the Smritis, which parleyed unfair privileges to men by denying women their legitimate rights. The draft of that report contained nine parts: Preliminary, Marriage and Divorce, Adoption, Minority and Guardianship, Joint Family Property, Women's Property, Succession, Maintenance and Miscellaneous. In 1955, the Hindu Marriage Act was passed, followed by the Hindu Succession Act and the Hindu Adoption and Maintenance Act in 1956, and the Dowry Prohibition Act in 1961. Thus, the Hindu Code Bill was enacted in a lucid form, and Ambedkar's absence at that time was cited by Hindu upper-caste leaders as the reason for its smooth passage! The core objectives behind this bill were to upgrade the condition of women and to remove the inequalities and injustices done over the centuries. Therefore, property and adoption rights, as well as the right to marriage and divorce, were conferred on women by the code, but denied by the scriptural sanction of the *Manusmriti*. The Hindu Code Bill was an integral part of social and political philosophy endorsed by Ambedkar to chart out the areas of inequality for adopting possible legislative measures. In the next section, I will engage with an area of violation of women's rights in which Hindu Women are being coerced to practice their marital rights in the name of the so-called idea of 'Love Jihad'.

**'Love Jihad' and the Question of Women's Rights:**

In the present case of 'Love Jihad', women's agency is being hijacked by the patriarchal forces of Hindu nationalists and upper caste Brahminical fundamentalists against the secular principles of constitutional rights. Hindu women sadly became the symbolic representation of caste purity, cultural homogeneity, and community honour. In the contemporary cases of 'Love Jihad', an orchestrated campaign of Right-wing fundamentalists is an example of the interplay between caste, gender, and religion. These concocted vicious narratives entrenched within patriarchal values created hysteria around women's victimhood to exercise greater control over women's agency and right to choose. Hindu right wing ultra nationalists in India, who in their attempt to demonize the entire Muslim community, concocted the vicious narrative that Muslim boys in India are strategically enamouring Hindu girls so that they can marry these Hindu women only to indoctrinate them in Islamic terrorist activities. This outrageous narrative led to the prevention of Hadiya, a Kerala woman, from meeting her own husband. Hadiya is a Hindu woman who converted to Islam after her marriage to a Muslim boy, and Hindu ultra-nationalists coerced her into not availing herself of her conjugal rights. Therefore, Hindu women again became the 'potential site for outrage of family order and Hindu sentiment strengthening the drive for patriarchal assertions and restoration of family and community honour' (Charu Gupta, 2009, p.14). These fundamentalists are trying to safeguard Hindu women as an exclusive preserve for Hindu men, which is again a complete violation of the dignity, rights, and agency of Hindu women. This 'politics of cultural virginity' (Charu Gupta, 2009, p.15) is instrumental in forming the narrative of women's victimhood and, at the same time, discarding their choice to choose their own partner. Recent strategically designed cases of 'Love Jihad' by Hindu Right Wing revivalists, who again try to manipulate the rights and agency of women, are against the constitutional features of social, political, and legislative modes of reform as discussed above. In the following section, I will address the Sabarimala Temple Entry controversy, which reignites tensions between the community's religious faith and women's individual rights.

**Sabarimala Temple Entry Judgement and the Women's Question:**

The rise of revivalist forces in the name of religious faith and belief systems belittles the question of women's agency and their rights by preventing entry for women between 10 and 50 years of age. The recent Sabarimala Temple Entry issue, where menstruating women are prohibited entry on the basis of their biological process, is extremely discriminatory in the post-colonial state, where every individual is emboldened with equal opportunity and rights. The whole notion of 'purity-impurity' is invoked to justify orthodox patriarchal religious cultures and practices in which women are being deprived of their fundamental rights. Again, the recent legal case of *S. Mahendran vs. Travancore Devaswom board* treated 'women as impure and polluted during their menstruation cycle' (2016 Writ Petition of Sabarimala Case, 39). This kind of gender stereotyping is one form of untouchability or discriminatory practice, which is barred by Article 15 in our Constitution. Banning entry for women of a certain age group into the Sabarimala Temple promotes a form of socio-religious disability on the basis of an alleged custom that considers menstruating women as impure. Even after the court verdict in 2018, the state failed to ensure the legitimate demand of women's rights and agency over community-

oriented discriminatory values and norms. The deep-rooted patriarchal rituals provoked by the Hindutva community ideology deny the women's struggle for social reforms, though it was protected in the constitutional validation through the enactments of Articles no. 14, 15, 17, and 25, etc.

### **Conclusion:**

Therefore, it has been quite evident from the entire discussion of the paper that the contradictory forces of Cultural nationalism, rather majoritarian cultural nationalism supported by orthodox religious customs, and the rightful struggle of social reformism, have continued since the 19th century and have become an unresolved part of the women's question in contemporary India. I have already discussed how cultural nationalists and orthodox religion tied hands together to utilize the agency of women in the 19th century and pushed the women's question into the inner domain. The recent rise of Hindu right-wing majoritarian nationalism began to challenge the traditional patriarchal values of the Brahminical order, which defies the secular principles of the Indian Constitution. From the analysis of contemporary debates, it can be drawn that the postcolonial state again collapses the women's question with the issues of ultra-nationalism (such as religious rites, tradition, or in the name of cultural heritage). Through the discussion on various issues like the Hindu Code Bill, contemporary events of the Sabarimala Temple Entry ban, and 'Love Jihad', I have tried to make an interesting reading to understand the women's question within the interplay of contested regulatory machineries of revivalist power of religious hierarchy and reformist structure of right-based identities. Most importantly, the proper implementation of the basic doctrines of equality and justice inscribed in the legal framework is necessary for social change that ensures women have equal rights and agency with men, through constitutional validation, and that avoids the ulterior motives of revivalist cultural vigilantes.

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