

The Hadiya Case: Human Rights Violations and State Islamophobic Propaganda in India

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Abstract

This paper examines the “Hadiya case” which in the years 2016 and 2017 was well known throughout India and revolved around a woman, named Hadiya, her conversion from Hinduism to Islam and her marriage to a Muslim man. It caught the attention of the entire nation through intense coverage by the national media. The decision of Hadiya, who is an adult with her own conscience, to practice the religion of her choice and marry the person with whom she wishes to share her life, instigated a public legal debate. Hadiya’s case, which evoked Islamophobic and patriarchal ideologies, should be placed within the current political conditions of India. With regard to language, religion and ethnicity, India’s diversity under a right-wing political regime has been questioned, while the human rights of women, religious minorities like Muslims and Christians, *dalits* (lower caste people) and indigenous people from tribal communities have been violated. Paying close attention to the legal and logical reasoning of the Indian High Court during the year-long trial, this paper also evokes a critical perspective on the understanding of growing Islamophobia, hatred politics against Muslims and the violation of women’s rights, particularly of those from minority religious communities and lower castes in. Indian society is facing cultural dominance under the Hindutva ideology – an ideology that is intent on the dominance of Hindus and Hinduism. Such a cultural and ideological dominance can be seen in the everyday life of Indians, in legal systems, media institutions and other formal and informal organizations. As will become clear, such cultural politics were disguised in the form of legality in the Hadiya case.

Keywords: culture, gender injustice, human rights; Islamophobia, right wing politics

Introduction

This paper examines the “Hadiya case”, which from 2016 to 2017 was well known throughout India. It revolved around Hadiya’s conversion to Islam and her marriage with a Muslim man. It caught the attention of the entire nation as the national media often focused on it. Some of the popular national media outlets like *India Today*, *Times Now* and *News18* reported on it case, often with Islamophobic tendencies. Hadiya’s decision, the decision of an adult with her own conscience, to practice the religion of her choice and marry the person with whom she wished to share her life, became the founding incident for a public debate. Importantly, Hadiya’s conversion and marriage was seen as “Love Jihad”.¹

At the time, Hadiya was a 24 year old woman and a homeopathic medicine student from the Sivaraj Homeopathy College, Salem, Tamil Nadu. She had officially converted to Islam from being a Hindu (from the Ezhava community) and married a Muslim man named Shafin Jahan. Before her conversion, her name was Akhila. She hailed from the Indian state of Kerala, from a town named Vaikom. In 2016, her father, K. M. Ashokan, had filed a writ petition in the High Court of Kerala, suspecting that she was going to be taken out of the country. Only in the later parts of the court case document is the specificity of Ashokan’s complaint evident. He was alleging that certain Islamic organizations had forced her to convert to Islam and wanted to move her out of India to indulge in the activities of the IS (Islamic State). He suspected these Islamic organizations to be practicing and preaching a radical form of Islam in India. After more than a year-long trial, on May 2017, Kerala High Court annulled her marriage with Shafin Jahan by declaring that the Islamic organizations had supported her conversion to become radical in her beliefs and practices. However, upon appeal, in March 2018, Hadiya’s marriage with Shafin Jahan was declared to be valid by the Supreme Court of India. In October 2018, as per reports submitted by the NIA (National Investigation Authority), the Supreme Court of India declared that there was no involvement of “Love Jihad” in this case. This made clear that the organizations that supported her conversion and marriage did not practice this radical form of Islam. The decision to convert and marry had also been Hadiya’s own will.

To understand this case, one needs to place it within the current political atmosphere in India. Since 2014, India has been under right wing ideological influence which is based on the hegemony of Hinduism and Hindu-Nationalism. The dominance exerted based on this ideology puts the diversity of the nation with regards to language, religion and ethnicity under question. Under a governance with such an ideological backing, human rights of women, religious minorities like Muslims and Christians, *dalits* (lower caste people) and indigenous people from tribal communities have at times been violated.²

¹ The term “Love Jihad” was first used in the Indian state of Kerala around 2007 and later in the Indian state of Karnataka in 2009. Catholic church bodies in Kerala and Hindu groups in Karnataka claimed that women from their communities were lured by Muslim men to get married by converting to Islam. But in 2012, after order from the Kerala High Court, the police declared that there was “no substance” to the claims that “Love Jihad” was taking place. The term, however, is widely used even today, mostly by Hindu right-wing groups. Thus, the term was used by BJP, during the 2017 Uttar Pradesh elections to polarise the people of the Indian state (Khalid, 2017). Gupta (2009) contends that there is no evidence to prove the existence of “Love Jihad”. She says that it is a way to control women by creating bogeyman imagery of and hatred towards Muslims in India.

² There have been many instances of violence during the current political regime in India. In 2015, Mohammad Aklaq, a Muslim man from Uttar Pardesh, was murdered as he was suspected to have stored beef in his fridge. In 2016, in Gujarat, seven Dalit young men were humiliated and beaten in public for skinning a dead cow. This incident was also videoed and circulated on social media. The Dalits have been historically charged with the removal of human and animal waste. In 2017, Junaid, a 17-year old Muslim youth was lynched on a local train in Haryana while having a clash over a seat. On police investigation, Hashim, his companion on the train, stated

While being politicized, the Hadiya case, centrally revolves around fundamental questions of religion and gender. Therefore, it becomes crucial to take up the perspectives of culture and human rights while making sense of this case. This text offers a close reading of the legal reasoning of the court, and it does so in order to understand the larger cultural politics that influence certain legal decisions of the court. Indian society is facing cultural dominance under the Hindutva ideology and such a cultural dominance can be seen in the everyday life of Indians, in legal systems, media institutions and other formal and informal organizations.

Crucially, it is argued that these cultural politics were disguised in the form of legal discussions in Hadiya's case. I argue that the discussions made in a legalistic manner regarding the validity of Hadiya's conversion, her marriage and the organization that supported her, hide the cultural politics of Islamophobia and gender injustice. Erni (2012) argues for a convergence of Cultural Studies and human rights law, in order to make the latter open to the diverse voices or the different kind of rights to be reclaimed by a society that faces different kinds of historical subjugation. He contends that "multiple legal consciousnesses" played a crucial role in the origination of universal laws (p. 187). While recognizing that universal laws are the manifestations of historical social struggle for recognition from different societies, he does not ignore the fact that the universal legal documents are not absolutely inclusive by addressing the arising social disparities. While reading the legal reasoning behind Hadiya's case, one should also see that the larger cultural politics of the political regime within which it existed and realize the influential power of such a politics. This particular approach towards Hadiya's issue is similar to Erni's proposal for the role of Cultural Studies as an intellectual tool to reshape legal understanding and debates.

Logical Reasoning Behind the Case: Following the Trajectory of the Case

It is crucial to closely read the court case document of Hadiya's case in order to understand the Kerala High Court's logical reasoning at various crucial junctures of the process. This document is a judgement based on the writ petition filed by Hadiya's father on 16 August 2016.

Firstly, judges K. Surendra Mohan and K. Abraham Mathew refuse to accept that Hadiya is "already a Muslim". The judges keep using her name before conversion, "Akhila", throughout. Hadiya had undergone several formal procedures to practice, understand, and convert to Islam. The judges show proof that Hadiya had gone to "Tharbiyathul Islam Sabha" in 2015 to register and understand Islam. Therefore, her decision for embracing Islam was not a sudden decision, as she had been working towards understanding the religion for some time already. In spite of producing the justifying reasons for her conversion the court dismissed her decision for conversion as invalid.

The High Court judgement starts off by tracing the history of the case. It mentions that the previous case was concluded by declaring that Hadiya was not under any "illegal confinement" and therefore she can stay with SaiNaba. SaiNaba had supported her and guided in enrolling

that the murderers had called them "beef-eaters", "traitors" and had asked them to "go to Pakistan" among many other insults. Asifa, an eight year old Muslim girl from a nomadic tribe community, was tortured in Kashmir, gang raped and murdered in 2017 by a group of men in a temple (a priest, men from the police force, a juvenile). In 2018, Pradeep Rathod, a 21 year old Dalit man from Gujarat, was murdered by upper caste men for riding on a horse, as it was considered to be an act of power and pride. These incidents show the hatred against Muslims and many such instances still remain un(der)reported.

her into an Islamic institution (Sathyasarani Educational and Charitable Trust) to embrace the teaching and tenets of the religion. Hadiya had approached her, as there had been no support from her family to practice Islam (*Hadiya*, 2017, p. 9). The court further declared that Hadiya was not forced into conversion as it was out of her own free will that she chose to embrace Islam. If the court meant that Hadiya was not under any “illegal confinement”, it should have ideally meant that SaiNaba, with whom Hadiya stayed and the organizations that SaiNaba was interacting with, were not practicing and teaching any radical form of Islam by illegally forcing people to practice or convert. Only at this point did the court ask them to produce income certificates to prove that SaiNaba can support Hadiya, while it should have been done in the previous investigation. If the court had mentioned that Hadiya was not under any “illegal confinement”, it should have said so, possibly after a thorough verification of the investigations. In spite of such a clear declaration, the court kept bringing up its apprehensions towards the concerned organisations, in the year-long trial after Ashokan’s second petition on 16 August 2016. The one year long engagement with the case ideally gave space to often take up the names of the involved organizations in order to further raise questions about the nature of the religion they preached.

Ashokan had filed a petition stating that his daughter might be transported to Syria suspecting that the main purpose of shifting her outside India would be to indulge in radical practices of Islam. But this particular suspicion behind his petition is made clear only on page 67 of the document of the Court Judgement. Before that, the document only briefly mentioned that Ashokan was suspecting that Hadiya would be taken to Syria but there is no mention of the reasons behind his suspicion. The court’s order for investigation related to Ashokan’s petition is irrelevant. The court’s order to search for Hadiya, right after the petition was filed, seems logical. But after she appeared in court by herself and only accompanied by SaiNaba (on 25 August 2016), the court with no valid reason ordered her to stay in a hostel and not with SaiNaba. The reason given was that in spite of constant persuasion to stay with her parents, Hadiya had refused to go back home. This reason was then cited by the court for ordering Hadiya to stay in a hostel and it is problematic. Instead of analysing why Hadiya refused to go back to her parents and the difficulties that she was facing at home in practicing the religion that she chose to follow, the court was constantly intending to send Hadiya back there. At this point, though, questions should be raised – such as: Why should Hadiya, a 24 year old woman, with her own conscience, be persuaded to stay with her parents against her will? Or, What was the problem if Hadiya constantly displayed her interest to stay with SaiNaba whom she trusts (and also the court already proved that staying with her cannot be considered illegal)? – the larger question remains unanswered, which was “Why didn’t the court directly probe Ashokan’s suspicion of ‘Hadiya’s shifting to Syria’ but diverted the investigation trajectory by making her stay in a hostel?”

Hadiya’s statement on her seclusion in a hostel with no communication with outsiders for 35 days proved that the court was complicating the case at every instance, as an immediate probe into “Hadiya’s shifting to Syria” would nullify Ashokan’s suspicion and fears and prove this case to be foolproof. This mode of investigation shows the court’s intention of grabbing the public’s attention by problematising the Hadiya’s case by engaging with it through irrelevant matters.

The court ordered Hadiya to remain in the hostel (while her father would “escort” her to the Medical college and hostel) by advising her to complete her House Surgeoncy. Apart from this, by setting up a serious surveillance of Hadiya’s whereabouts, the court did not just display

patriarchal tendencies but also created a further panic regarding the organisation and the religion behind it in the public's mind.

On 21 December 2016 Hadiya appeared in the next court session with her husband Shafin Jahan. Anyone, even those with no legal background, would understand Hadiya's move. The court's constant interference in this case by not approving SaiNaba as her guardian, made her choose a legal guardian who would ideally be the person whom she gets married to. According to the court case document, on April, 2016 Hadiya had registered on a matrimonial site, "Way to Nikkah". When an offer from Shafin Jahan came to her, she spoke with him and found him to be the right person to get married to. On 19 December 2016, they married in SaiNaba's house according to Islamic Shariat Law in the presence of a Khazi (Islamic spiritual leader) of Puthoor Juma Masjid. They produced a marriage proof certificate from Thanveerul Islam Sangham of the Malapuram district. Although the above mentioned details about the marriage are stated in the court document, the court did not consider any of the legal and logical dimensions. Instead, it decided to question the background of Shafin Jahan and suspected the authenticity of the marriage, as the overall intention of the court while investigating this case, was more set on questioning the "nature" of Islam in the case. Moreover, it is clear from the details of the marriage that it happened as per Hadiya's will. But the court chose to disagree with this.

Already during the emergence of this case, the court had been pointing at the religious organizations that supported Hadiya. It neither respected Hadiya's decisions nor chose to include her as a respondent in this case. When Ashokan had filed the second writ petition, Hadiya appeared in the court requesting the court to include her as a respondent in the case. But the court chose to include SaiNaba (7th respondent) and Sathyasarani Educational and Charitable Trust (6th respondent) in this case. The court did not just deprive Hadiya of her agency but it also projected the case to be a case of a Hindu individual (Ashokan) and "influential" Islamic organizations. In fact, Ashokan's voice and his further opinions seems to be invisible as the case now took on a new direction. The court claimed that it did not want to interfere in Hadiya's religious faith, the court revealed its anxiety from time to time towards the organizational backing in this case. The court did not see the organizational backing as a support system for religious minorities, instead it portrayed it as a "threat" to the rest of society. In many instances the court had used the term "radical" but failed to show any proof to support this claim. Further, without providing logical reason, the court kept criminalizing Shafin Jahan. To put forth this claim, the court used very weak evidences. The court kept bringing up his social media activities as a proof of his social background. It was mentioned in the judgment that Shafin Jahan was a part of the WhatsApp group SDPI (Social Democratic Party of India), Keralam, of which Mansy Buraqui, who had been arrested on the allegation of his association with IS (Islamic State), was also a member. However, at a later time, Mansy Buraqui was removed from the WhatsApp group. The document mentions that Shafin Jahan had an association with Mansy Buraqui to further criminalize him (p. 85). But it neither provided valid evidence for the claim nor mentioned the nature of such an association between them. The court clearly mentioned that Mansy Buraqui had been removed from the group. If the court still had suspicions, it should have ideally extended its investigations beyond WhatsApp in order to understand the nature of their association. Arshed, Jantan and Abiodun (2018) critically review the issues involved in producing digital technologies as forensic evidences in court. They specifically looked into the usage of social media as evidence, and argued that investigators tended to use social media as evidence because of its ubiquity and ease of access. But they contended that it cannot be "self-authenticating". They mention that social media evidence should be backed by other circumstantial evidences. They argue that it is imperative to also

produce the way in which the data was retrieved. Lastly, they view the investigations based on social media evidence with caution as it also invades the rights of “constitutional privacy” of the person under suspicion.

In the above, I simply point out the weak and irrelevant ground of the court’s investigation. But let me stress again that the court’s reasoning cannot be isolated from the larger political conditions in India. A Cultural Studies approach would contend that the very nature of the court’s legal reasoning lies within the dominant cultural politics of the country. The fact that Hadiya’s case is now made complicated forces one not to just see it as freedom of choice being generally neglected, which would be bad enough, but that a woman’s freedom of choice is at stake to embrace a particular religion, here Islam. Erni (2012) invites a “symbiotic convergence of political and legal practices”, for he argues that the legal apparatuses that are in place are conceived from historical struggles. Therefore, the alliance with a Cultural Studies framework will lead to a better understanding of the ideological biases of the state structures, which in turn intensify the socio-political struggles especially for women and religious minorities.

A Critical Constitutional Consideration

The court trial made no reference to the Constitution of India at any point of the trial. Naturally, the human rights of the different actors of this case come into light via this negligence. The following section tries to understand the case by placing it parallel to the Human Rights Law of the Indian Constitution and International Laws.

This case was not seen as simple case as a right of an individual to convert to a particular religion, practice it and marry a person from the same religion. This case was made complex because of a particular religion that one chose to embrace. At the time, here was a growing Islamophobic tendency in Indian society to be noticed. The scenario started escalating under the current right-wing political regime. Therefore, it might be argued, did the court choose to problematize the case. The fact that a woman chose to convert to and practice Islam became a convenient factor for the court to further oppose the religion. In Indian society, many still believe that a woman does not possess the capacity to think and decide things on her own. Therefore, the court while ridiculing the woman’s decisions and choice, eventually targeted her religion. It was convenient for the court to reduce and disrespect her decisions by focusing particularly on factors like her intellect, income and social support. Article 25 of the Indian Constitution and Article 18 of the International Covenant on Civil and Political Rights (ICCPR) both declare that everyone has the right to freedom of thought, conscience and free profession, practice and propagation of religion.³ These articles deliver a clear message that practice of a religion of one’s own choice is a basic right of an individual. But by intervening into Hadiya’s decision and by questioning it, the court undermined this right. The court devalued the crucial human quality of conscience. In this case, Hadiya was not seen as a “normal human being” with the ability to think. Her interest in a religion was reduced to a lack of reasoning.

Okin (1998) offers a useful re-reading and re-interpretation of Article 18 of ICCPR. She does this when trying to understand how women’s rights are often violated within the private sphere of family and that such acts are often justified by appeals to cultural and religious norms. She argues that although the ICCPR acknowledges that the right to freedom of conscience, thought

³ Article 25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (Constitution of India)

and religion for “everyone” are fundamental by nature, the ICCPR remains restrictive, as it emphasizes that “the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own conviction”. Therefore, Okin points out that according to ICCPR, children are not a part of an “everyone” who has the right to choose and change their beliefs and they must conform to their parents’ values and beliefs. Unfortunately, in this case, by devaluing her thoughts and forcing her to conform to her parents’ opinions, Hadiya was treated as a child.

Article 14 and 15(i) of the Indian Constitution mentions that women are equal before the law and that the state shall not discriminate any citizen on the grounds of sex.⁴ Similarly, Article 3 of ICCPR emphasizes that women and men have the right to enjoy their civil and political rights.⁵ The fact that this appears in both domestic and international law shows the importance of women’s rights. But the court that should be protecting their rights ended up violating them. It violated her rights by completely isolating her during forced hostel and home stays. After the final hearing on 24 May 2017, Hadiya was forcefully separated from her husband. She was made to stay with her parents. She was not allowed to talk to any outsiders, even over the phone. She was under constant surveillance; she was allowed to go to her college only under police surveillance. These orders executed by the court were against the Indian Constitution, as Article 19(d) proclaims that everyone has the right of free movement across Indian Territory.⁶ Further, the series of treatments of Hadiya by the court proved that the court refused to see her as a 24 year old adult but regarded her as a child who needs constant care and who should often be watched.

Further, the court gave the picture that Hadiya’s self-interest should be within her family values. The Kerala High Court often mentioned that it found the need to interfere in this case because it was strange for a young girl to refuse to go with her parents. Sen (1990) contends that family values influence individual perceptions and stop one from thinking for oneself. Okin (1998) argues that family as an environment for shared interest and altruism dominates the self-interest of an individual. More importantly, women are often made to hold the “status” of a community (the community can be based on religion, race, ethnicity, caste and class) in order to preserve the “purity” of the community (Abraham, 2014; Chowdhary, 1997). It would not have been the same if it had been a Hindu man converting to Islam. Even though “Love Jihad” is propaganda by the Hindu forces, they chose to speak about Hindu women within their definition of the term. Under the current political scenario, while this case was seen as a communal issue between Hindus and Muslims, the fact that a woman chose to transcend the religious boundaries created a “moral panic” within Hindu patriarchal society. That is also the reason why the court never wanted to accept that “Akhila” is not “Hadiya” and did not recognize her as a Muslim. In a way, this even showed that they “claimed ownership” over the woman by not just not recognizing but also ignoring her decisions. She did not see herself as a

⁴ Article 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. (Constitution of India)

Article 15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (Constitution of India)

⁵ Article 3. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. (ICCPR)

⁶ 19. (1) All citizens shall have the right—(a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; (f) omitted (g) to practise any profession, or to carry on any occupation, trade or business.

Hindu and had gotten the certification of proof for her conversion to Islam. The fact that none of these formal, logical and reasonable procedures mattered to the court clearly points to the patriarchal tendency of the court.

Erni (2012) argues that a Cultural Studies approach to the legal frameworks of an issue breaks the notion of legal essentialism by breaking the assumption that there is a universal distinction between legal and non-legal practices. In Hadiya's case, though the rights to practice a religion and choose a person on her own to marry are protected by law, the court chose to ignore them. Islamophobia is not just a strategy of Indian political propaganda but it a propaganda tool of global politics. Lean (2012) and Kumar (2012) present a holistic and historical picture of US Islamophobic tendencies. This could be looked at to understand the Indian scenario. Lean metaphorically calls Islamophobia an "industry" that manufactures fear of Muslims and Islam through a network of "tight-knit and interconnected confederation of right-wing fear merchants" that are largely comprised of media houses and government bodies. Kumar debunks five stereotypes from the global anti-Islam discourse-Islam as a monolithic religion; as uniquely sexist; as alien to reason and rationality; as inherently violent; and as incompatible with democracy. She argues that, historically, these stereotypes have often been presented as "common sense" of society for the imperialistic agendas of the world power. The "divide and rule" strategy set up by British rule created the "us" versus "them" mindset amongst the Hindus towards the Muslims. This orientalism of Hindu India continued even after colonisation. The "divide and rule" strategy of colonial times is one of the reasons of continued internalized Islamophobia in Indian public life (Breckenridge and Veer, 1993). In post-colonial times, the idea of "native Hindu and outsider Muslim" has become a political construct. In India, as a "geographical and political nation" started emerging, Hindu majoritarianism also emerged. India has a parliamentary democratic constitution that enabled constitutional liberal democracy. Constitutional liberal democracy does not only enable a political system by free and fair elections but also enables the "rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion and property" (Zakria, 2004). But the Hindu Majoritarian political system has been seeing the political majority as an identity-based majority and not as a democratic majority (Anand, 2011).

Eventually, the wide gap between the constitutional theory and political practice can be seen in India through the violation of Muslim rights. As a diverse society, India has several religious minorities (Christians, Budhhists, Sikhs, Jains) among which Muslims are the largest in population. Indian Muslims have been facing conflicting experiences even since pre-independence times, as India has always had Hindu political leaders from dominant castes (Chopra, 2013; Thomas and Jaffrelot, 2012; Sabarwal and Hasan, 1991). The state-supported atrocities on the Muslims of Kashmir, the demolition of Babri Masjid and the killing of Muslims after the death of 59 Hindus in Godhra, Gujarat grasped the attention of National and International Human Rights bodies (Majid, 2017). Since 2014, Indian society has become highly insecure for Muslims. The U.S. Commission on International Religious Freedom mentions that in the recent times "religious freedom violations" had increased and "religious tolerance" had decreased in India. For the past five years, "issue-based violence" has increased, which includes violence on Muslims and Dalits for "possessing and/or transporting beef; violence for not expressing patriotism and refusing to say 'Bharat Mata Ki Jai' (Hail Mother India); violence following accusation that a Christian or Muslim had converted a Hindu to their faith; violence against Muslim men falling in love with Hindu women, which was termed 'Love Jihad', etc." (report by the Alliance for Justice and Accountability, 2017).

The violation of human rights of various actors in Hadiya's case should be seen within this context. Through Article 30, and Article 27 of ICCPR the Constitution of India declares that the minority communities have the rights to support themselves by establishing organisations for educational purposes.⁷ Further, Article 26 of the Indian Constitution mentions that every religion has the right to manage religious affairs by establishing institutions for religious and charitable purposes.⁸ Indian law allows associations in the name of religion because it is a multi-religious and multi-ethnic country. Every religious community has the right to teach and practice religious values as long as it is maintaining public order. The emphasis on these rights will be favourable for religious minority groups to practice their religious beliefs in a peaceful manner.

Hadiya chose to follow Islamic principles and was given support by other Muslims in the fraternity and the relevant organisations. But the supportive organisational backing bestowed upon her was seen as a threat by the court. It showed a similar anxiety towards Shafin Jahan by villainizing him just because he was a Muslim. While Article 15 of the Indian constitution prohibits discrimination based on religion, the court discriminated him throughout the trial by labelling him as a criminal without proper investigation and valid proof. It has become clear that the case was problematized and politicized in order to propagate Islamophobia within Indian society and therefore violation of human rights of a Muslim individual in this case should be seen as discrimination of the entire Indian Muslim community and therefore a violation of their right to dignity.

Conclusion

In the aforesaid it has becomes clear that in this particular case the court did not seem to need proof to spread “hatred” against the Indian Muslims but it just needed the “time” and “space” to spread Islamophobic tendencies within the consciousness of Indian society. In other words, by directing the case in illogical ways, the court ended up engaging with it for a longer time and in turn leading to its extensive engagement in the public space. The media played a vital role in discussing and debating Hadiya's case as a national issue. Some of the popular national media reiterated the court's tendencies that demeaned Hadiya's moral sense to eventually forge hatred against Indian Muslims. In its 27 November 2017 issue, *Times Now*, a popular national media channel, traced the history of Hadiya's case, and kept projecting Hadiya as a woman with low mental capacities. It presented her as “poor student” since high school days, as “ignorant” to the “Love Jihad” environment “prevalent in the country” and as an “arrogant woman who kept defending her act of embracing Islam.” *India Today*, a media house, telecast news sessions and published news reports supporting the Kerala High Court's decisions. The news sessions and news articles were presenting this alleged “Love Jihad” as a reality. The media houses went on to call it a “national security issue”. Yogi Adityanath, the Chief Minister of Uttar Pradesh, often noted as his party's firebrand to propagate Hindutva ideologies, condemned Kerala's Left-centric Kerala's state government (Communist Party of India

⁷ Article 30: Right of minorities to establish and administer educational institutions.- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice (Constitution of India Article 27). In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. (ICCPR)

⁸ Article 26: Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-5 (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion. (c) To own and acquire movable and immovable property; and (d) To administer such property in accordance with the law.

(Marxist)- CPI(M) Kerala) for not taking action against the “dangerous trend” of “Love Jihad”. Shafin Jahan’s lawyer in Supreme Court condemned *Jana Raksha Kerala Yatra* – a rally organized by the ruling party which happened on October 2017 in Malapuram district of Kerala – the district with a Muslim majority where the ruling party Chief Amit Shah and Yogi Adityanath took up Hadiya’s case in their speech for their political propaganda. During the *Yatra*, Rajasekaran, Kerala State BJP President, accused Kerala’s state government of turning a soft corner towards “anti-national forces” with regards to Hadiya’s case. Therefore, the atmosphere that was created parallel to this long trial further fanned the already existing anti-Islam ideologies. Politicizing this case became a strategy for the ruling party’s political agenda to enter the state of Kerala which has the strong presence of electorate of CPI (M).

Erni (2012) argues that a Cultural Studies approach is crucial to theorize “questions of rights, intersubjective claim-making, the performativity of the legal subject in judicial processes and most importantly to theorize the attainment of justice within a formalized institutional setting”. Apart from centrally ruling the country, BJP is also in power in 12 Indian states, and Union Territories in total and is in coalitions with other parties in six states (out of 29 states and seven Union Territories). Since then, its emergence and after defeating the fifty years of governance by the Indian National Congress party, the *Hindutva* ideology has been mediated across Indian society. This is accompanied by the violation of the rights of any community not considered part of mainstream Hindu society (dalits, women, tribal communities, Christians and Muslims). The violation of human rights through the current political regime’s cultural politics, and through the notions of religion, gender and caste, is becoming more severe day by day. These basic but crucial rights are often at stake in the name of religion and caste. In fact, taking up religion and caste becomes a convenient way to mobilize a society and getting away with inefficient governance. Politicization of Hadiya’s case mainly in the name of religion goes hand in hand with the violation of minority rights and women’s rights.

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