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### Gendering Democracy: Necessity and Challenges

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\* The views expressed in this paper are those of the authors and do not necessarily represent those of the United Nations.

## Introduction

For whom is India democratic?

Newspaper headlines in recent times speak about atrocities and violence that cannot have any place in a functioning democracy. For instance, custodial torture of Assamese Muslim women; rape and intimidation of young women, even infant girls, by men in political office, or backed by the ruling dispensation; the Indian army's excesses in regions that have witnessed political insurgency (Manipur or Kashmir), which has often taken the form of rape and violence against women; have all been subjects of intense political controversies, struggles and debates. Alongside, there are the more quotidian forms of discrimination, from declining avenues, and rates, of employment; wage differentials, between organized and informal sectors of the economy; low rates of education for girls and women, across sectors (primary to tertiary); declining sex ratios that signify patriarchal attitudes, and attendant violence, like a preference for sons that normalizes sex selective abortions, and the invisibility of a wide variety of quotidian forms of women's (mostly unpaid) work, from quotidian domestic responsibilities to care-work.

Each of these render problematic the difficult terrain of rights and citizenship - and the tension between a liberal idea of equal citizenship that's based on difference blindness and the disadvantages that social groups may experience as a result of their social location or self identification (Jayal: 4). How does one envisage a democracy that can not only have rights and freedoms, but also have enabling provisions that make it part of the lived reality of social groups across gender, caste, religion or class? How can gendering rights alter our idea of democratic rights, social justice and civil liberties?

Here I shall look mainly at the changing landscape of marriage in contemporary India, and use that as an entry point to think about the relationship between religion, law, gender and violence. This I will argue are inherently linked to the changing face of India, from being imagined as a secular democracy to being recast (albeit within the framework of democracy) as a religious majoritarian 'Nation'. In other words, I want to argue (taking a cue from BR Ambedkar, framer of the Indian Constitution and radical political thinker) that the social is the site of the political. Therefore, the brief remarks here are a starting point for how one may rethink democracy, mostly understood as political, via the politics of gender - usually relegated to the domain of the social.

## Section 1

### a) Demography, marriage and structures of discrimination

A recent study on gender based infant mortality in India (Guilmoto, Saikia, Tamrakar and Bora, [https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(18\)30184-0/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(18)30184-0/fulltext)) shows that close to 240,000 girls under the age of 5 die each year (and close to 2.4 million in a decade). The authors argue that this is because of neglect, born of gendered discrimination, which ranges across factors like care, nutrition, vaccination, amongst others, which eventually affects their survival. Significantly, the authors note that these statistics reflect mainly the demographic histories of four of the northern Indian states (Bihar, Uttar Pradesh, Rajasthan and Madhya Pradesh). Son preference and sex selective abortions (SSA; now conducted illegally) have a long history in India. In brief, despite the history of diverse community

based practices in marriage, and in kinship patterns, has not meant substantial rights for women across religious communities. The politics of demographic shifts and cultural practices like kinship are linked often in non-intuitive ways. So while patriarchal practices, like SSA are linked to marriage and kinship; education; economic independence; as well as cultural practices, these also need to read as the initiators of a new moment of asymmetric gender politics.

The trend for declining sex ratios in northern India (BIMARU states) that's evident in the 2001 census also reflects a modern patriarchal moment that enables the twinning of new technology with SSA. If we read this alongside a shift in cross regional marriages – a pattern observed increasingly where men from the states of UP/Haryana/Punjab/Rajasthan marry women from W Bengal/Assam/Bihar/Andhra/Tamil Nadu/Kerala, it may appear as though there's an attitudinal shift away from regional endogamy, and perhaps even more traditional structures of arranged marriages. Scholars suggest that any number of reasons from adverse sex ratios (women unavailable in "own" region); poverty; or the parents' desire to escape dowry (Kaur), may precipitate cross regional marriages. However, such data, or arguments, do not make clear a set of critical issues relating to caste, endogamy or the regulation of Indian women's sexuality. One, it is unclear if cross-region is necessarily a cross-caste phenomenon, (though the suggestion often is that women from lower castes follow caste rules regarding marriage less scrupulously).

Second, despite the "norms" of marriage being flouted to some extent in the emergent, cross regional, marriage practices these are still patriarchal in imagination as no woman from the 'north' would marry out of the region; also the burden of adjustment is always on the women coming into north from other regions. In this context, the outrageous recent statement made by the Chief Minister of Haryana (Khattar) apropos the abrogation of Article 370 of the Indian Constitution that transformed Kashmir's special status within the Indian union, that this would permit men from Haryana to "bring in brides from Kashmir" (<https://economictimes.indiatimes.com/news/politics-and-nation/now-we-can-bring-kashmiri-girls-ml-khattar/articleshow/70616644.cms?from=mdr>) is symptomatic of both the new 'norm' of cross regional marriages, and also, more significantly, the assumption that such a marriage would make the Kashmiri woman, Haryanvi. The language of marriage is in essence a respectable way of speaking of sexual access and control, and cannot be read outside the logic of territorial, and possibly demographic, reconfiguration of Kashmir that underlies the abrogation of Article 370. Even within the wider Indian context, I would differ with a blanket assumption that regards cross regional marriage as marking a break with older practices of caste/community/regional endogamy. Instead I would argue that when read together with incidents of 'honour killings' (the murder of either bride or groom or both in case of cross-caste/interreligious relationships/marriage), where patriarchal regulatory practices re-inscribe values of caste and religious community, such cross regional marriages could also be seen as part of a regional assertion that utilizes marriage as its strategy. (Or exogamy can erase certain markers, e.g. caste; without good ethnography hard to generalize). I shall develop this in the next section.

## b) Religion and caste

Women's bodies and sexuality are continuously under scrutiny, and regulation, as they are also the site of battles, and struggles. Here I wish to develop, in brief, the manner in which more violent processes like 'honour killings' and love jihad are integral to reimagining the relationship between family and the state. In part, such struggles in the present moment must be read within the context of a longer history of colonial codification of religious laws in India, drawing upon ecclesiastical texts and opinions of religious

'authority' (e.g. Brahmin and Muslim priests). Suffice it to say for the present argument that the codification, and recasting of religious interpretation as 'personal laws', is responsible for religion and family beginning to co-constitute each other (and creating a context in which such laws have a direct bearing on family and property, especially in matters of marriage, divorce, inheritance, and succession). The implications of the colonial history of family/marriage are immense in the postcolonial period, both regarding structural issues (be these in relation to property, or the differences in gendered positioning within the family regarding authority) and the manners in which religion and caste orthodoxies continually attempt to regulate women's bodies and sexuality in order to maintain their own social authority.

Three quick examples would then be in order. For instance, the Hindu Succession Act of 1956 did not give daughters a share in ancestral property, restricting their rights only to self acquired property of the father. In fact the resistance to Ambedkar's Hindu Code Bill in the 1950s stemmed from an upper caste fear that women's rights to family property, marriage, succession and inheritance would challenge the Hindu caste and religious order. Similarly, despite the landmark juridical victory in 1986 by Mary Roy (Mary Roy vs Travancore Succession Act, fought the gendered differences in inheritance amongst Syrian Christians) in her challenge of the Christian Succession Act, it is worth remembering that this was on the basis of a technicality (that both Travancore Succession Act and Christian Succession Act were struck down once Cochin/Travancore joined Indian union in 1951) and not because of an argument favouring gendered equality within the family. A third example (Shah Bano case of 1985-86) demonstrated that governments, irrespective of political party affiliations, could accommodate the demands of religious orthodoxies against the rights of women. So a 75 year old divorced Muslim woman petitioned the court for maintenance under the Criminal Procedure Code of Indian law ultimately lost the case (she withdrew) after an initial victory. In principle this occurred because the then government (Congress, led by Rajiv Gandhi) aligned itself with the opinion of the Muslim clergy and the Personal Law Board's view that the courts had no authority to interpret the Quran, and that Muslims were bound only by Sharia law. Therefore the Muslim Women (Protection of Rights on Divorce) Bill of 1986 was retrogressive, with its protectionist language that replaced the divorced woman's legal right of maintenance from husbands with a total dependence on the family. The Shah Bano case signified the victory of 'religion under danger' argument, and its consequent marginalizing of the rights of the elderly Shah Bano who had waged a difficult legal battle for 10 years.

Here, on the bases of the examples above, I wish to suggest that the gendered differences to rights within marriage and inheritance, across religious community, need to be read alongside the more dangerous turn for judicial policy interventions that has the potential for reversing Constitutional and democratic rights in India and rendering majoritarianism, natural. Be this the move from 1980s onward of the Hindu Right appropriating an earlier feminist demand, based on an argument of gender justice, for a Uniform Civil Code, or the more recent abolition by the BJP government of Triple Talaq, the political consequences are obvious. In the guise of state protectionism for Muslim women, such policy interventions increasingly produce rationalizing processes that can lead to criminalizing Muslim men. This is particularly relevant where most people – especially illiterate women, but also others, are neither legally literate, nor have the resources to challenge the consequences of such communal (against a minority religious community) governmental policies. In fact, feminist activists and scholars have repeatedly critiqued the targeting of religious minorities by the present Hindu majoritarian government, and the gendered consequences of this.

Such criminalizing of a community, via state policies and interventions, acquires a different dimension when read alongside the frightening phenomena of “honour” killings, and the violence unleashed by moral policing and charges of “love jihad”. In recent times, both cross caste, and inter religious, relationships (be it between lower/upper caste; Hindu/Muslim) have attracted media and political attention because of the violence unleashed against the young people who’ve challenged traditional caste/kin/community authority by entering into such relations. In several instances couples are forcibly separated, and punished -both by invoking peno-legal systems but also more directly by families killing these youngsters. Many parts of the country have witnessed the collusion between traditional caste bodies (khap panchayats), the modern state and the family against couples asserting romantic/marital preferences. In brief, I would suggest that the resurgence of caste or religious patriarchies are symptomatic, but also the consequence, of religious authority being re-inscribed into the logic of personal laws. These, other than being patriarchally configured, are also founded on the idea of religious and caste difference and separation. From the 1960s, the Hindu Right has raised the bogey of the Hinduism being under threat from Islam. One of the forms this has taken is that of the allegation of ‘love jihad’ – or the idea that Islam will undermine Hinduism via an act of seduction. Therefore an interreligious relationship, especially between a Muslim man and a Hindu woman (though increasingly this is just a short hand for any inter religious relationship) is seen as a pernicious Islamic strategy that demands violent rejection. The increasing incidence of violent community brutality against interreligious and inter-caste relationships become possible at a time when the government, itself is founded on principles of religious majoritarianism and bigotry, works to protect the interests of the Hindu upper castes. In such situations, it is unsurprising that religious and caste based forms of undermining democracy take the form of sustained attacks on women’s rights and freedoms within marriage and family, but also rights to sexuality.

In sum, I would argue that the contradiction between the acceptance of one form of socio-sexual arrangements (cross-regional marriage) and the violent rejection of another (romantic attachments across caste/community, of people who mostly belong to the same region) is because the latter poses a real threat to patriarchal familial forms that do not disturb religious ordering based on community difference.

## Section 2

### Rethinking democracy and citizenship

The histories of women’s and feminist movements in the past decades reveal the need to go beyond ideas regarding electoral participation to understand the functioning of democracies. The struggle histories of the women’s movement in postcolonial India, be it against violence against women (domestic, or other forms – be it caste, religious or state); against SSA and declining sex ratios; unemployment, wage differentials and the right to labour force participation; for the right to religious freedom (from enabling faith practices to conversion); all reveal the extraordinary difficulties women face in being full citizens of India. These also reiterate the need to examine the lived realities of democracy and citizenship, rather than merely imagine these as abstract ideals. Such challenges remind us that gender or social justice have to fought for, and protected, and not assumed or taken for granted. How easy this will be in an environment of drastic legal changes, curbing rights, and the introduction/scaling up of draconian laws (UAPA, for e.g) isn’t easy to predict, though the prognosis isn’t particularly optimistic.

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