



## Major Political Discourses on Triple Talaq: Case of India

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### ABSTRACT

Starting from the 80's the question of the validity of Instant Triple Talaq (i.e. divorce in Arabic) made its way from the courts to political sphere in India. In this regard, three major political discourses sided differently in the argument and contributed to the transformation of a judicial question to a political phenomenon. One belonged to the Orthodox Muslim community, which essentially considered the debate as an attack on its freedom of religion by an inferior Hindu-dominated structure. Another belonged to the Hindu right wing, which spotted an opportunity in this particular debate to attack Muslim community's public image. The third one belonged to the Seculars, Congress Party<sup>1</sup> and its allies, who out of the fear for their vote-bank among orthodox Muslims attempted to meddle in the matters of court and surprisingly supported the narrative of Orthodox Muslim community. Public policy and law-making processes have always been seriously affected in India by communal tensions, as India is a Hindu-majority country with a considerable population of Muslim minority. This study intends to review the position of each major discourse in this controversial debate in order to show that essentially, dislocation of the issue by the discursive competitions in a communalist society leads to blockades in progressive reforms.

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1. Indian National Congress was the most influential entity in the Indian struggle for Independence, which after the Independence became the dominant political party for four decades.

## 1. Introduction

On August 22<sup>nd</sup> 2017, the Supreme Court of India pronounced the Instant triple talaq<sup>1</sup> practice unconstitutional and invalid. In the ruling, the Court directed Indian Parliament to take legislative measures against the practice. (SCO, 2017) The government of India, led by the Hindu-nationalists issued two ordinances in order to give effect to the court ruling. later in July/September 2019 the Muslim Women (Protection of Rights on Marriage) Act was passed by the Houses of Indian Parliament. The Act moved above the court ruling of invalidity, by criminalization of the practice. It also provided imprisonment (up to 3 years) and fine for the practitioners. (PIB, 2019) These legal actions eventually concluded a controversial issue in India rooted in more than three decades of political competition. Personal laws in India including marital laws in particular have raised a lot of debates and tensions in India. In a theoretical proclamation it could be argued that besides ‘Cow-Slaughter’ and ‘Inter-Communal Marriages’, Personal laws regarding minorities has been one of the nodal points around which the discursive competitions in India have become antagonistic.

A brief background review of the controversy around the debate would help contextualization of the issue in contemporary Indian politics. While the eventual ruling on Instant triple talaq was in response to the Shayara Bano v. Union of India case of 2017, the controversy around personal family law started much earlier especially in the Mohd. Ahmed Khan v. Shah Bano Begum case of 1985. The Shah Bano case articulates the above-mentioned political twist and turn. After being married to Mohammed Ahmed Khan for more than four decades, Shah Bano Begum was dissented by her husband for several years. Unable to maintain herself and her children, she approached the judicial authorities in order to claim for maintenance, due to which her husband divorced her with the practice of instant triple talaq. The Supreme Court of India ruled in her favor and granted her right to maintenance under section 125 of criminal law, arguing that the Section 125 of Code of Criminal Procedure<sup>2</sup>, applies to everyone regardless of caste, creed, or religion. the Muslim community and its civil representatives including ‘All India Muslim Personal Law Board’ objected the decision. They argued that according to Sharia<sup>3</sup>, Muslim husbands are obligated to provide their divorced wife up until the end of Idda<sup>4</sup>, not until the date of re-marriage. In other word, their argument was that the Supreme Court Judgment is against the Sharia. Thus, they started to leverage their political influence in order to reverse the judgment.

The judgment came at a turbulent time, during which the Ram Janmabhoomi movement gained momentum among Hindus. Hindus pushed for access to the site of Babri Masjid, which they considered to be the birthplace of Hindu god Ram. The Muslim community was agitated with the fact that Hindu devotees intended to enter the premises of the historical mosque. Pressured by fear for their Muslim vote-bank, the secular Congress party that held a majority in Lok Sabha<sup>5</sup> back then, pushed to pass a bill that reversed the ‘Supreme Court’ named ‘Muslim Women Protection on Divorce Act’, 1984. This act asserted the position upheld by the “All India Muslim Personal Law Board” that was limiting the right to maintenance at the time of Idda. In other words, the progressive ruling of the Supreme Court of India was effectively blocked and reversed by the influence of communal agendas. While the case had less to do with instant triple talaq and more to do with the right to maintenance, it is considered a significant milestone in contemporary Indian politics.

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1. Instant Triple Talaq allows a husband to instantly divorce his wife by simply uttering ‘talaq’ (divorce) three times. This instant divorce is also known as ‘Talaq-e-bidat’.

2. According to section 125, a divorced women is entitled to maintenance as long as she has not re-married.

3. Muslim personal laws as interpreted by Muslim scholars

4. Idda is a three-month waiting period a woman must observe after the death of her husband or after divorce.

5. The lower house of the Indian Parliament

Since then, many cases of marital disputes arrived at courts among them many generated controversies with the Shayara Bano v. Union of India case of 2017 being the latest. Shayara Bano was married to her husband Rizwan Ahmed for 13 years. In October 2015 Mr. Ahmed divorced her through the practice of instant triple talaq. Claiming that the practice violates a woman's rights to equality, livelihood and against discrimination, she filled a writ petition to the Supreme Court of India. In 2017, the 'Supreme Court' of India ruled out in her favor by a vote of 3 out of five and declared the practice of Instant Triple Talaq as unconstitutional. Much like the Shahbano Case, All India Muslim Personal Law Board objected this ruling, this time, arguing that it is the Muslim community itself that could decide the personal matters of Muslims. The Board also claimed that the practice is sinful, yet permitted by Islam. In this case, several Muslim-dominated civil society groups and their supporters used their leverage in favor of the ruling. Two years after the judgement, the 'BJP<sup>1</sup> Government' of Hindu nationalists introduced a bill in which practice of Instant Triple Talaq became punishable offence. In fact, it could be argued that BJP's indifference toward a Muslim vote-bank, created an environment in which a progressive reform survived communal pressure. These two cases brightly depict the influence of communalism on legal and technical reforms of progressive nature. This study intends to theorize this influence with using the post-structuralist discourse theory, particularly the notion of discursive competitions and hegemony.

## **2. Theoretical Framework: Discursive Competitions**

As stated by M. Jørgensen & L. J. Phillips (2002: 24) "Discourse theory aims at an understanding of the social as a discursive construction whereby, in principle, all social phenomena can be analyzed using discourse analytical tools." In discourse theory, social phenomena are to be seen as constructed by discourse and it initially comes out of the notion that social phenomena are neither finished nor total. Therefore, meaning is not to be seen as an ultimately fixed phenomenon and there is a constant social struggle going on over the definition of identities in the society. These struggles also create social effects and the task bestowed upon a discourse analyst is to pursue these struggles and the processes of fixation of meaning in the society.

Articulation is "any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice. The structured totality resulting from the articulatory practice, we will call discourse. The differential positions, insofar as they appear articulated within a discourse, we would call moments. By contrast, we will call an element any difference that is not discursively articulated. (Laclau and Mouffe 1985: 105) All social practices can thus be seen as articulations (Laclau and Mouffe 1985: 113) because they reproduce or change common ascriptions of meaning.

Therefore, discourse is not to be considered a closed entity but an entity always transforming through interaction with other discourses. These interactions are to be understood, as discursive struggles in which are the key concepts in this study. Discourse theory, suggests there is not only one discourse in every society. Instead, a variety of discourses are competing with each other to become "Hegemonic". In other words, every discourse is trying to fix its definition of the contested elements of society, rejecting the alternative definitions and "articulations". Political discourse operates by creating chains of equivalence and differences, constructing nodal points (key terms or concepts), floating signifiers (meaning of which is open to contest). The struggle to fix these meaning is considered to be the struggle for hegemony. (Laclau and Mouffe, 1985)

This study attempts to employ post-structuralist discourse analysis grounded in the above-mentioned theoretical framework. The units of analysis in this study are primary resources that

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1. Bharatiya Janata Party (BJP)

reflect the discursive articulations of the main players in the political arena. Since the unit of analysis in the theoretical framework is discourse, the method involves a qualitative analysis of key texts around the subject including political speeches, interviews, media narratives and official proceedings in order to identify key discursive formations and examine their hegemonic attempts. As the theoretical framework is anti-positivist in nature, the resources have been collected with purposive sampling and the quotations have been chosen on a non-random, goal-oriented basis.

### **3. Personal Law and Discursive Competitions in India**

The debate in India around personal laws was initially formed by the founding fathers of the 'Republic' through the process of writing the article 44 of the 'Indian Constitution' which addresses the importance of a Uniform Civil Code that is: "The State shall endeavor to secure the citizens a uniform civil code throughout the territory of India" (India Const. art. XIV). As narrated by Seth (2008): Muslim constituents in the assembly opposed the bill and demanded exclusion of the Muslim minorities from this article. Eventually no viewpoints were accepted, and it was not made a directive principle of 'State Policy', postponing the problem to be sorted out by a future government.

Early governments of India spearheaded by a secularist Congress party reformed personal laws of different communities, among them the 'Special Marriage Act' (1954) for non-religious civil marriage and triple Hindu acts regarding family laws namely the 'Hindu Succession Act' (1956), the 'Hindu Minority and Guardianship Act' (1956) and the 'Hindu Adoptions and Maintenance Act' (1956). These acts regulates and updates personal family matters of the majority of Indian citizens. For example, Hindu women's right for divorce and the prohibition of polygamy for Hindus was secured in these reforms. Yet, they exclude Muslims, Parsis or Zoroastrians and Jews as minorities to whom their own personal law applies. In the case of Muslim minority, the 'Muslim Personal Law' (Sharia), 'Application Act' of 1937 remained the main ruling provision on their personal affairs after the Independence in 1947. the secular ruling party in India refrained from the idea of uniform civil code and refused to extend progressive reforms to all citizens. When the above-mentioned bills on Hindu personal laws were being debated, the issue was brought up by Acharya Kirpalani as he said:

We call our State a Secular State – a Secular State goes neither by scripture nor by custom. It must work on sociological and political grounds. If we are a democratic State, I submit we must make laws not for one community alone. Today the Hindu community is not as much prepared for divorce as the Muslim community is for monogamy. Will our government introduce a Bill for monogamy for the Muslim community? Will my dear Law Minister apply the part about monogamy to every community in India?... I tell you this is the democratic way. It is not the Mahasabhaite<sup>1</sup> alone who are communal; it is the Government also that is communal, whatever it may say. It is passing a communal measure. I charge you with communalism because you are bringing forward a law about monogamy only for the Hindu community. You must bring it also for the Muslim community...the Muslim community is prepared to have it but you are not brave enough to do it." (Seth, 2008)

Apart from a vocal criticism, Kirpalani's argument largely summarizes the major competing discourses and their representatives around personal law in India. Here, three major forces are visible, each of them articulating their own discursive formation of the question of personal laws (the secular state, the Muslim minority, Mahasabhaite or the early Hindu nationalists.)

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1. A group of traditionalist Hindu politicians who advocated for the early forms of Hindu nationalism in India. Due to their traditionalist stance, they opposed reformation of Hindu personal laws, yet their opposition was largely ignored by the secular ruling party.

Kirpalani's argument in fact points out to the fact that the secular government's articulated discourse around personal law is dislocated by communalism. After all, if reforming basic rights in personal matters is a legal necessity for Indian society, it should be applicable to all and the opposition from Muslim representatives should be ignored just like the opposing voices in the Hindu community was being ignored. Yet, the influence of the communal discourse of Muslim representatives, has led to dislocation of basic rights and their attribution by the seculars. In other words, it could be argued that the dominant secular discourse, represented by Congress, articulates monogamy as a basic right -with specific measures to be taken for the empowerment of women-, and at the same time it considers polygamy as part of the larger minority entitlement to freedom of choice.

Almost three decades after that, the Shah Bano case and the contested definition of basic rights in it, proved Kirpalani's critic. As mentioned in the introduction, the secular government of Congress party proposed the Muslim Woman Act, actively trying to deprive the Muslim women, from the empowering outcome of the Shah Bano ruling. It is important to note that initially, the Congress government supported the reform. In fact, Arif Mohammed Khan, back then the Minister of State for Home Affairs, in a three-hour speech in Parliament, initially defended the reform. Yet, this time, apart from the communal discourse of Muslim representatives, another communal discourse was also on the rise. That was the voice of Hindu right which building upon several factors, started to consolidate itself as a competitor to the secular discourse of Congress. To counter the rising voice of Hindu-nationalists, the Secular Congress party purposively altered its political discourse on women's rights and influenced by communalism in both sides, the Secular government of Congress took a U-turn and supported limitation of maintenance to the period of Iddat as a minority entitlement for the Muslim community by attempting to institutionalize it. In other words, the secular discourse around personal law was again dislocated by communalism. The influence of the Muslim communalism was obvious, yet one should note that the influence of the Hindu right was not constructive in nature. Back in early 90's Pathak and Rajan wrote a cryptic statement regarding the Shah Bano much like G. C. Spivak's account of the debate around Sati<sup>1</sup>:

The attack of Hindu fundamentalists (often members of communalist political parties like Shiv Sena, Vishwa Hindu Parishad, Rashtriya Swayam Sevak Sangh) upon the proposed Muslim Women Act, upon Muslim Religious Law in general, and upon Muslim community at large on behalf of oppressed Muslim women translates into the proposition "Hindu men are saving Muslim women from Muslim men. It is a bizarre as well as sinister claim. It invokes the stereotypes of the Muslim woman as invariably destitute, and the Muslim male as polygamous, callous, and barbaric". (Pathak & Rajan, 1992)

Again, it could be argued that three major political discourses attempted to articulate their discourse around personal law (the secular state, the Muslim representatives, the Hindu nationalists). Among them, the Hindu communalism saw an opportunity in the Shah Bano case, to demonize the Muslim community. By that, they actually contributed to the further dislocation of personal law in the secular discourse, as they intensified polarization.

Three decades after Shah Bano Case, the Shayara Bano case was presented before the Supreme Court and the historic judgement on instant triple talaq was passed. The discursive articulation of the notion of personal law and women's right was different this time. Unlike the other incidents, the secular discourse articulated a formation largely in line with the empowerment of women, as it was ousted from power and sat in the opposition seat in the Indian politics. While several leaders from different secular parties criticized some aspects of

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1. A former practice in India, in which a widow sacrifices herself by sitting atop her deceased husband's funeral pyre

the bill, the majority of Secular voices played along with the reforms. In other word, the dislocation in the secular articulation of the issue influenced by the communal discourse of Muslims did not happen. Neither Congress nor other secular organizations did not defend the practice as legal and valid. On the contrary, they acknowledged the fact that reform is needed in order to uplift the Indian women's status in personal affair. The other two discourses, almost remained the same, albeit with some difference.

The Hindu nationalist discourse has been at the driver's seat in Indian politics for quite some time, unlike the other incidents. The Muslim communalists have been sidelined in comparison to other incidents. On one hand, civil society movements and organizations of Muslim women acquired agency recently. On the other, the influence of traditionalist Muslim organizations have experienced a serious decline due to the rise of Hindu nationalist to power. Unlike the secular forces and their fear for Muslim vote-bank back then, the Hindu nationalists believe pay little attention to the opposing voices in the Muslim community. With reference to Kirpalani's speech, one could argue that the All-India Muslim Personal Law Board is the new Mahasabhis when it comes to the question of personal laws, which was a communal voice needed to be ignored in the process of reform.

It is true that ruling on invalidity of Instant Triple Talaq was eventually welcomed by many intellectuals and activists in India, but the cynical role of existing political discourses was frequently acknowledged. Right after the ruling, Punwani (2019) writes that political interests have played their own cynical role in provoking the backlash and in polarizing opinion on communal lines. In other words, the bills popularly known as the "Triple Talaq Bill," have been used as political weapons by the two main players: BJP which rules at the center and the All India Muslim Personal Law Board (AIMPLB), a self-styled representative of the Muslim community.

The issue has been highly exploited by the Hindu Right-wing in line with their anti-Muslim agenda. As an example, a high-ranking leader of BJP compared Instant Triple Talaq to one of the most infamous mythical stories of women degrading (Disrobing of Draupadi<sup>1</sup>), while another BJP Member of Parliament sparked controversy speaking about Instant Triple Talaq implying that "these talaqs have no basis.... if someone only for satisfying his lust keeps changing his wives and forces his own wife and children on the streets to beg... no one will call this as right." (India Today, Apr. 2017)

On the other hand, All India Muslim Personal Board and several other Muslim organizations generated a dislocated discursive articulation about instant triple talaq attempting to resist their competitor's articulation. In fact, the insisted on the validity of instant triple talaq regardless of the fact that the practice is highly uncommon and contested among Muslims in India and around the world. While Shia and Hanbali Muslims do not recognize Instant Triple Talaq as valid, Hanafi and Maliki<sup>2</sup> sects consider it illegal and sinful yet unchangeable. Shafe'i sect, on the other hand, consider it permissible. To be precise only one out of the five different Islamic sects of Sunni Muslims permit the practice. It is also important to know that from the religious point of view, the practice is far from a prescribed version of divorce among Muslims. It is also important to review the position of different Muslim-majority countries on the issue, in order to grasp a full comprehension of the popularity of the practice and its validity among Muslims. This instant divorce mostly occurred among Muslim communities by adherents of Hanafi<sup>3</sup> School of Islamic Law. The 'Muslim Personal Law Act' of 1937 allowed the process of Triple

1. Disrobing of Draupadi is one of the central stories of Mahabharata in which Draupadi's dress is being forcefully removed in public by a group of tyrant rulers.

2. Hanafi, Maliki, Shafi'i and Hanbali are the four different schools or sects of Sunni Islam which alongside Shia Islam are considered the five major schools of the religion.

3. Hanafi school is the oldest of the four major Sunni Islamic schools of Jurisprudence.

Talaq to give a special privilege to Muslim men over his wife. It allows a man to break his marriage. It is not required for the husband to mention any reason to divorce his wife under this law. The revocability of divorce was decided as per the period of Idda whether the wife is pregnant or whatever.

Surprisingly many of the Muslim-majority countries of the region reject the validity of Instant Triple Talaq. Kavisha Kohli and Divya Narayanan (2017) have summarized the legal status of Instant Triple Talaq in different Muslim countries concluding that as India debates the validity of the practice, nine Muslim-majority countries have long regulated divorce and outlawed Instant Triple Talaq. Iran adheres to Shia<sup>1</sup> tradition in which Instant Triple Talaq is rejected and legally speaking, Divorce can be granted by a Judge and/or court only after reconciliation efforts have failed. (Civil Code of Iran, 1935) Highly proximate in culture and Islamic traditions to India, Pakistan and Bangladesh have passed the Muslim Family Law Ordinance in 1961 (in the Undivided Pakistan and before the independence of Bangladesh) that requires the man who wishes to divorce his wife to give the 'arbitration council' a written notice of his claim, and provide a copy of the same to his wife. Failing to do so is punishable by up to one year of imprisonment and fine. (The Pakistan Code, 1961) As one of the most secular Muslim-dominated countries in the region, Turkey does not recognize any other form of 'marriage, or 'Talaq', except one sanctioned by the civil court. (Turkish Civil Code, 2001) A review of these provisions in Muslim countries principally shows that the practice is endorsed by a marginal portion of Muslim countries around the globe and is in fact far from being an essential tradition in Islamic personal law.

Based on the comparison of these different stances, one could argue that the communal tensions in India is a major contributing factor to the resistance shown by Orthodox Muslims of India on the above-mentioned case. In other words, a small proportion of Muslims in India seem to resist a legal provision that was passed without resistance in several societies in which Muslims constitute an absolute majority.

Also, Instant Triple Talaq is one concern among several feminist activists of Indian society, many of which are being excluded by the discursive competitions in Indian politics. As articulated by Agnes (2019) the Hindu Right - wing has tried to overemphasize on the issue for its own communal agenda and to the expense of exclusion of all other gender concerns.

Most of the time, Muslim men believe their actions are approved by the Quran. However, it has not mentioned in the Quran, also disapproved by Muslim legal scholars.

The non-government organization, All India Muslim Personal Law Board (AIMPLB) has opposed banning Triple Talaq and polygamy. It aims to educate Muslims on the protection of Islamic laws. As per the survey, 92% of Muslim women wanted to ban Triple Talaq in India. Since it gives the right to men to arbitrarily divorce their wives without any proper reason. Furthermore, this is not good for a democratic and secular India to continue this unethical practice. The latest rule is truly an encouragement in the women empowerment movement in India. The court has given progressive thoughts over the personal law in society. The abolishment of Triple Talaq will deny discrimination and injustice from Muslim women's lives in the future. Society should also come forward against this social evil to abolish this practice, since women's empowerment is very essential for the progress of the nation.

#### **4. Major Political Discourses on Triple Talaq**

Simply put, it could be argued that over the course of years, three major players tried to assert their own agenda or in a theoretical proclamation "articulate their own discourses around the Lacanian point du captions of the debate". Based on Laclau and Mouffe's notion of discursive

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1. Shi'a is the second largest branch of Islam after Sunni Islam.

competitions, the political debates and interactions in the contemporary India are to be seen as discursive attempts to fix meaning and therefore enjoy a level of hegemony in the social sphere.

Building upon the above-mentioned narrative, three major political discourses are identified in the topic: The Hindu-Nationalist Discourse, The Communalist Discourse of Muslim Orthodoxy, The Secular Discourse. Table 1 summarizes these three discourses and their representatives.

**Table 1. Major Political Discourses around Personal Law**

| Hindu Nationalist Discourse  | Communalist Discourse   | Secular Discourse  |
|--|---|--|
| <ul style="list-style-type: none"> <li>• Represented by Mahasabha, later by BJP and other RSS-affiliated groups</li> </ul> | <ul style="list-style-type: none"> <li>• Belonging to the Muslim Orthodoxy</li> <li>• Represented by AIMPLB and some of the Muslim parties</li> </ul> | <ul style="list-style-type: none"> <li>• Fragmented Representation by the Congress party and opposition groups/ Civi society and rights activists</li> </ul> |

(Source: Authors)

As mentioned, these three major discourses have their own representation in the mainstream politics. As for example in the case of Instant Triple Talaq, the Hindu - right wing and BJP represented the first one, while the AIMPL<sup>1</sup> and several other Muslim organizations represented Muslim communalism. As the Congress party lost its dominant place in secular politics of India, representation of the third discourse is fragmented and the ‘Congress Party’ along with several other opposition parties and rights activists represent this particular discourse.

#### **4-1. Communalist Discourse**

From the perspective of communalism any attempt to reform personal laws applying to the Muslim community is seen as an attack to the identity and autonomy of the Muslims. Thus, in the constant social struggle over the definition of identities in India, the All-India Muslim Personal Law Board and several Muslim political parties articulate a discourse in which personal law is a sacred domain in which only a handful of community-affiliated scholars have a say. After all, they genuinely believed that “the courts cannot ban triple talaq because it is an integral part of Muslim faith.” (Mathew, 2017) Any intervention by the state is thus unnecessary and aggressive. This is why the bill was named by AIMPLB “the worst form of dictatorship” and “clearly motivated to polarise the upcoming election” (Hindustan Times, 2018)

In such discourse, maintenance, divorce, and other personal matters are equivalently linked with the notions of religious freedom, minority rights and communal identity. Even when a practice like instant triple talaq is considered an evil conduct by the Muslim scholars of the board, it rather ignores the emancipatory outcome of the ruling and resist the abolition as a majoritarian incursion. The communalist discourse fixes the meaning of women’s rights in marriage within a chain of Sharia, religious freedom and Muslim autonomy.

#### **4-2. Hindu-nationalist Discourse**

From the perspective of Hindu nationalism, the state has every right to intervene in personal laws of different communities, as it did with the Hindu community. The fact that Hindu-nationalist have been avidly pushing for application of uniform civil code in India, is largely driven from this understanding. Therefore, the Hindu-nationalist discourse sees an opportunity

1. All India Muslim Personal Law Board



in the instant triple talaq to eradicate minority appeasements. Thus, the bill would be a sign of “political courage” which earlier governments lacked for “appeasement to gain votes” (Business Today, 2019). In the constant social struggle over the definition of identities in India, BJP and RSS articulate a discourse in which the Muslim community in large is backward, corrupt and misogynist. “If someone only for satisfying his lust keeps changing his wives and forces his own wife and children on the streets to beg... No one will call this as right” (Press Trust of India, 2017).

In such circumstances, the Hindu-nationalist discourse deploys instant triple talaq to justify its own project of national integration. It also constructs a chain of equivalence between women’s rights, uniformity and civilizational correction. While the reform is progressive in nature, this discursive articulation of instant triple talaq becomes part of the larger hegemonic attempt to stereotype Muslim community and assert Hindu majoritarianism.

#### **4-3. Secular Discourse**

As previously mentioned, the Nahravian seculars of Congress party deliberately failed to articulate a progressive discourse around personal law by adhering to the non-interventionist approach. Back then, the Congress enjoyed a dominant position among secular forces. On Shahbano Case, the secular discourse represented by Congress by large articulated personal law, including maintenance and divorce, as part of minority rights in which it only intervened to further consolidate the minority stances. Therefore, it linked women’s rights with minority rights and Muslim autonomy, largely dislocated and similar to the communalist discourse. Yet, over the course of years, Congress has lost its political dominance among secular forces and the incentives and the capacity to act as the patron of minority communities. As several secular parties including Congress walked out to protest that bill, the bill was widely welcomed by feminists and rights activist of secular background. In the post-structuralist terms, the secular discourse has lost its hegemonic capacity due to internal contradictions. In itself, the secular discourse is posed by serious questions (largely by the feminist and rights activists) and as the new nodal points such as women empowerment emerge, older articulations around community autonomy are contested and signified.

#### **4-4. Identifying Floating and Empty Signifiers**

Instant triple talaq have become a floating signifier within Indian political discourses, as its meaning is not fixed (or a singular definition of it has not hegemonized the others). To the communalist discourse of Muslim orthodoxy, it signifies religious freedom and communal identity. To the Hindu-nationalist discourse, it signifies (religious) oppression. Across all these discourses, women’s rights emerge as an empty signifier, as all these various actors attempt to hegemonize it in order to achieve their own desire. For the communalist discourse, women’s rights are trojan horses for cultural domination. The Hindu-nationalist discourse, instrumentalizes it for civilizational correction. The secular discourse remains fragmented and ambiguous, yet it largely promotes it as an autonomous goal.

### **5. Conclusion**

On August 22, 2017, the Supreme Court of India declared the practice of Triple Talaq unconstitutional. The Indian government also established a legal prohibition on Triple Talaq, with the enactment of the Muslim Women (Protection of Rights on Marriage) Act in 2019. Thus, Instant Triple Talaq was declared arbitrary, irrational and not only contrary to Articles 14, 15, 21, and 25 of the Constitution of India but also totally against the international conventions on civil rights and human rights. Triple Talaq is a procedure of an instant divorce under Islamic Law followed by some Muslim men in India. It allows a Muslim husband to legally divorce his wife by pronouncing ‘Talaq, Talaq, Talaq’ three times. Instant Triple Talaq

remains one of the most controversial debates in contemporary Indian politics around which discursive competitions of the society attempted to mobilize their audience. With these three players in action rather technical issue in law - making process had become a highly politicized topic for more than two decades blocking progressive reforms. Revoked and criminalized eventually by the Supreme Court and the Government of India in 2019.

In fact, this study shows that much needed legal reform is turned into a political debate to further communal agenda or attract a vote - bank of communal nature, leaving the actual voices from within the society unheard. While two of the major discourses are in fact communalist in their own agenda, the secular discourse of opposition parties seem to dislocate the issue by political concerns turning its back to its own secularist positions. Ironically it is based on that dislocation of the signifier that the actual problem of women's right inside marriage and after that, has become a battleground for different powerful communal agendas.

By this formation of different discourses around the topic, a progressive reform that took place in conservative muslim societies such as Pakistan and Bangladesh back in 60s was blocked over communal tendencies of the major competing discourses from Shahbano case to Shayara Bano case and took three decades to happen eventually. It is to be noted that in a larger scale, the main discursive competition to allocate meaning and attain hegemony in contemporary India is in fact between the Hindu nationalist and the Secular discourse, yet the communal nature of the meaning-allocation practices among communities have led to a dislocated reproduction of the Communalist Muslim discourse by the Seculars. With the loss of Congress political dominance and the rise of Hindu-nationalists, this reform eventually took place. Nevertheless, the political force that eventually moved forward with the reform, seems to use it for a larger majoritarian agenda.

**Declaration of Interest Statement**

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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