

## The ‘Vulnerable’ Hindu Woman, *Love-jihad*, and the Indian Courts: The Hadiya Case - Commentary on *Asokan K.M. v. State of Kerala* (2017) 2 KLJ 974

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**Abstract:** In *Asokan K.M. v. State of Kerala* (2017) at the behest of a disgruntled Hindu father whose daughter had converted to Islam and married a man of her choice, the Kerala High Court (HC) cast the daughter, Hadiya, as a ‘vulnerable’ woman before annulling her marriage. In this article, I place the infamous Hadiya case within a broader history of *love-jihad* – an ascendant Hindu nationalist conspiracy in India that asserts that Muslim men wish to convert Hindu women to Islam by feigning love and seducing them, thus posing a threat to all Hindu women, and by extension to the community and the nation itself. I then analyse the public perception and the media discourse around the trial, before turning to the Indian Supreme Court’s (SC) judgment in the case. I argue that by denouncing patriarchy and ostensibly finding in favour of Hadiya, the SC judges portrayed themselves as feminist allies, yet by allowing the National Investigation Agency to continue their ‘terror’ investigation against her husband, they not only insidiously undermined Hadiya’s decisions, but also revealed the shallowness of their feminist stance. In the last section, I appraise the rewritten feminist judgment offered by Urmila Pullat and Sandhya PR who situate themselves as the dissenting judges on the Kerala HC bench.

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### A. Introduction

The case against Hadiya was precipitated by her fight to choose her religion and her spouse against the explicit wishes of her father and was heard before the Kerala High Court (HC) at Ernakulam and later the Indian Supreme Court (SC) in New Delhi (2018). At a time of widespread Hindu right-wing led demonising of the Muslim ‘other’ and attempts to create a fear of ‘*love-jihad*’ (literally war through seduction/ feigned love) amongst Hindus, Hadiya’s decisions to convert to Islam and to marry a Muslim man against the wishes of her father received widespread media and public scrutiny.

At the heart of her case lie questions of choice: the choice of conversion of religion and selection of a spouse. The Indian Constitution allows an adult woman who does not

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lack capacity, to convert to a new religion<sup>1</sup> or marry any man of her choosing who is legally eligible.<sup>2</sup> Yet, many social, cultural, and as we shall see below. Increasingly. new legal pressures, are brought to bear upon the woman so that she does not exercise her right to make these choices. The present case not only highlights the cultural burdens borne by Hindu women, but also emphasises the role that the Indian courts can play in implicitly restricting her rights in the name of culture. Hadiya's desire to retain her legal autonomy as a competent adult woman in the face of familial disapproval exposed the deep misogyny of the law and the Indian legal structure, and in doing so revealed the latter's implicit yet dangerous acceptance of the right-wing Hindu mistrust of minority religions.

### B. Hindu nationalism and the fear of *love-jihad*

Hindu women, and their bodies – especially as potential Hindu mothers – have always been integral to the Hindutva project i.e. the political ideology of Hindu nationalism.<sup>3</sup> Under this ideology India is primarily imagined as a Hindu nation which must be protected against the ‘treacherous’ designs of the minority communities. Great emphasis is placed on the ‘chaste’ and ‘pure’ Hindu woman who is sought to be ‘protected’ not only against the desires of men outside the community,<sup>4</sup> but against her own romantic and sexual desires too. This trope of the ‘vulnerable’ Hindu woman is juxtaposed with the figure of the ‘dangerous’ male outsider, most often cast as the demonised Muslim man a figure of ‘fear, fantasy, distrust, anger, envy and hatred’,<sup>5</sup> whose ‘othering’ and demonisation are both part and parcel of the *Hindutva* strategy.<sup>6</sup> As Chatterji et al. argue, ‘conjuring a constant political, social and demographic threat from Muslims...is the constitutive feature of the ideology of Hindutva.’<sup>7</sup>

As it seeks to mobilise its supporters, Hindu nationalism attempts to cast this Muslim ‘other’ in the role of the lecherous abductor whose very presence is supposed to be a threat to all Hindu women, and by extension all Hindu families, further the Hindu community,

1 Under Article 25 – Freedom of conscience and free profession, practice and propagation of religion.

2 As an extension of Article 21 – Protection of life and personal liberty.

3 *Sikata Banerjee*, Armed masculinity, Hindu nationalism and female political participation in India: Heroic mothers, chaste wives and celibate warriors, *International Feminist Journal of Politics* 8(1) (2022), p. 62.

4 *Ibid.*

5 *Dibyesh Anand*, The Violence of Security: Hindu Nationalism and the Politics of Representing ‘the Muslim’ as a Danger, *The Round Table* 94(379) (2005), p. 203.

6 *Ratna Kapur*, Gender and “Faith” in Law: Equality, Secularism, and the Rise of the Hindu Nation, *Journal of Law and Religion* 35 (2020), pp. 407, 419.

7 *Angana P Chatterji et al*, Introduction, in: Chatterji et al (eds.), *Majoritarian State: How Hindu Nationalism Is Changing India*, Oxford 2019, pp. 5-6.

and, thus, the Hindu nation itself.<sup>8</sup> Since the turn of the new century, this figure has been repeatedly invoked in the context of *love-jihad* or the belief that Muslim men wish to convert Hindu women to Islam by feigning love and seducing them. Here, the motives assigned to the Muslim man range from the relationship being an inescapable result of the 'lustful' and 'hypersexualised' nature of the Muslim man,<sup>9</sup> to his desire to impugn the honour of the Hindu community,<sup>10</sup> to the Muslim community's desire to swell its numbers all the while reducing Hindu numbers in India.<sup>11</sup> Tyagi and Sen frame this fear of *love-jihad* as 'the anxiety of Islam overtaking the Hindu nation, through the body of the Hindu woman'.<sup>12</sup>

However, this trope of the Muslim kidnapper is not new in the Hindu nationalist discourse. The historian, Charu Gupta, has drawn our attention to the 'uncanny resemblance' between the manufactured controversy around *love-jihad* in the 21<sup>st</sup> century and the charges of 'abduction' and 'conversion' made by Hindu revivalist bodies against Muslim men during the *shuddhi* (purification) and *sanghatan* (unification) movements of the 1920s.<sup>13</sup> It is helpful to remember that it was the same decade when Hindu nationalism first coalesced into national level institutions such as the All India Hindu Mahasabha (1921) and the Rashtriya Swayamsevak Sangh (RSS) (1925), and when the first mainstream idea of Hindu nationalism or *Hindutva* emerged in V.D. Savarkar's *Essentials of Hindutva* (1923).<sup>14</sup> Thus, we find that for over a century, central to this Hindu nationalist notion of the assertive Hindu community – and by extension their idea of an ideal Hindu nation – has been the endeavour to control the body of the Hindu female. Apart from the manufactured propaganda concerns that Gupta highlights, this endeavour also manifests itself in ubiquitous panics around inter-caste, inter-community and inter-religious romances.

Though the term *love-jihad* had become popular by the late noughties, as an ideological campaign it became widespread only after the Bharatiya Janata Party's (BJP's) win at the centre in 2014. In fact, this Hindu nationalist campaign against *love-jihad* was accompanied by three other campaigns that were supported by the Sangh Parivar in the period, each of which targeted minority communities: i.e. the campaigns against religious conversion from majority to minority religions or the *Ghar Wapsi* movement; against cow slaughter;

8 David James Strohl, Love jihad in India's moral imaginaries: Religion, kinship, and citizenship in late liberalism, *Contemporary South Asia* 27 (2017), pp. 28, 29.

9 Ibid; Charu Gupta, Hindu Women, Muslim Men: Love Jihad and Conversions, *Economic and Political Weekly* 44(51) 2009, pp. 13, 14.

10 Ibid, p. 14.

11 Kapur, note 7, p. 419.

12 Aastha Tyagi / Atreyee Sen, Love-Jihad (Muslim Sexual Seduction) and *ched-chad* (sexual harassment): Hindu nationalist discourses and the ideal/deviant urban citizen in India, *Gender, Place & Culture* 27 (2020), pp. 104, 108.

13 Gupta, note 10, p. 13.

14 Subsequently published as *Vinayak D Savarkar, Hindutva: Who is a Hindu?*, Bombay 1938.

and the attempt to ghettoise Muslims and exclude them from mixed neighbourhoods.<sup>15</sup> In September 2014, *love-jihad* was the cover story of the RSS weekly magazines *Organiser* (English) and *Panchjanya* (Hindi). Soon vigilante groups such as the RSS-established *Hindu Behen Beti Bachao Sangharsh Samiti* (Save Hindu Sisters and Daughters Struggle Committee) and other ‘anti-Romeo squads’ were actively intervening in the community to prevent this ‘practice’, while ideologues such as Ajay Mohan Bisht (aka Yogi Adityanath) and Uma Bharti sought to raise attention against this supposed menace, with the former labelling it an ‘international conspiracy’.<sup>16</sup> Around the same time, an international element was also added to this fear of *love-jihad*, where Muslim men are now accused of wanting to convert Hindu women to forcibly traffic them to the Middle-East as soldier-wives to participate in the ongoing conflict in the region.<sup>17</sup>

### C. Hadiya’s case at the Kerala High Court

It is in this context of the fear of *love-jihad* that we must analyse Hadiya’s case. In early 2016, Hadiya’s father Asokan filed a writ petition<sup>18</sup> for habeas corpus at the Kerala High Court alleging that his daughter had been converted to Islam against her will and was being illegally detained by people who had played an active role in her conversion. In response to this writ petition, Hadiya (formerly known as Akhila Asokan) had submitted an affidavit detailing her initial disillusionment with Hinduism and gradual interest in Islam which eventually led to her converting to the religion. She also went on to file the Writ Petition (Criminal) No. 1965 of 2016 complaining against police harassment because of her father’s prior petition. The Court eventually ruled that Hadiya was not being detained against her will and she was allowed to live independently.<sup>19</sup>

However, the matter did not end there. In August of the same year, Asokan filed another writ petition. In the second petition he continued to allege that his daughter had been forcibly converted to Islam, but now also claimed that she was likely to be taken to Syria. Even though Hadiya was by now 24 years old and had almost completed her degree in Bachelor of Homeopathic Medicine and Surgery, her father continued to cast her as a vulnerable young woman who had been misled into converting to Islam. The very next day, the HC issued an interim order to keep Hadiya under police surveillance and to ensure that she was not removed from the country even though she had repeatedly asserted that she did not even possess a passport.

15 Christophe Jaffrelot, *Modi’s India: Hindu Nationalism and the Rise of Ethnic Democracy*, Princeton 2021, see esp. ch 6.

16 Quoted in Amy Pielalue / Amanda Gilbertson / Manas Raturi, A Majoritarian View of ‘Gender Justice in Contemporary India: Examining Media Coverage of ‘Triple Talaq’ and ‘Love Jihad’’, *South Asia: Journal of South Asian Studies* 44 (2021), pp. 739, 750.

17 Ibid, p. 741; and Gupta, note 10, p. 15.

18 Asokan K.M. v. The Superintendent of Police, WP(Crl) No. 297 of 2016.

19 Asokan K.M. v. State of Kerala, (2016) SCC Online Ker 972.

In December 2016 a new bench of K. Surendra Mohan and K. Abraham Mathew JJ, directed Hadiya to give up her independent residence, noting that: “[The petitioner’s]...anxiety and concern as the parent of an only daughter is understandable. Therefore, it is necessary that the detenu shifts her residence to a more acceptable place, without further delay.”<sup>20</sup> Here the language used by the Court is indicative of where their sympathies lay. They ‘understand’ and record the plight of the father but make no attempts to understand Hadiya’s own feelings on the matter. In addition, from this point onward in the rest of the judgment, Hadiya is simply referred to as the ‘detenu’ and not the ‘alleged detenu’ which further indicates that from an early stage, the court had already implicitly decided that Hadiya was being held against her wishes, despite her repeated protestations to the contrary. The Order also questioned the source of the funds that allowed Hadiya to live away from her parents; she was directed to file an affidavit disclosing the source of her income, and arrangements were made for Hadiya to live in her college hostel.

However, two days later, Hadiya returned to the Court with a husband and a marriage certificate, which noted that she had married Shafin Jahan in the presence of witnesses on 19 December 2016. The Court expressed its displeasure at being notified of the marriage after it had taken place and questioned whether the marriage had been performed to remove Hadiya from India more easily, as her father had been alleging all along. Even though Hadiya was present in court and could be questioned on these matters, the judges refused to interact with her to find out if the marriage had been performed under coercion. We see throughout the proceedings at the HC an attempt to silence Hadiya in the courtroom, and for the judges to presume to speak on her behalf<sup>21</sup> – this finally culminated in the judges’ shocking decision to enforce *parens patriae* powers over a competent adult.

In early January 2017 the Court noted:

*This Court exercising Parens Patriae jurisdiction has a duty to ensure that young girls like the detenu are not exploited or transported out of the country...it is necessary to bear in mind the fact that the detenu who is a female in her twenties is at a vulnerable age. As per Indian tradition, the custody of an unmarried daughter is with the parents, until she is properly married. We consider it the duty of this Court to ensure that a person under such a vulnerable state is not exposed to further danger...<sup>22</sup>*

The Kerala HC further issued directions that Hadiya was to be moved to a new hostel, that the police were to ensure that she did not possess a mobile phone, and that only her parents could meet her in person and no one else. By using language such as ‘young girls like the detenu’ and ‘vulnerable age’ to describe a 24-year-old woman, the judges sought

20 Asokan K.M. v. State of Kerala, (2017) 2 KLJ 974 [13].

21 The Court not only silences Hadiya but also her mother Mrs Ponnumma, who is mentioned once, but has no distinct voice within the trial records.

22 Asokan K.M. v. State of Kerala, (2017) 2 KLJ 974 [16].

to repeatedly infantilise Hadiya and hence negate her decision-making powers. According to the judges, in the Indian tradition after a woman is ‘properly married’ the custody of the parents comes to an end, presumably because the married woman is now under the custody of her husband. This whole statement reeks of rank patriarchy, where adult Indian women can never be recognised as consent-bearing citizens capable of making decisions for their own bodies and lives.

What should have been a simple writ of habeas corpus, was turned by the Court into a case on who had the legal right to choose a husband for an adult Indian woman. Through its judgment the HC reduced Hadiya, and by extension all Hindu women, to being a property of her father, to be retained or given away at his pleasure. While doing so, the Court disregarded Article 21 of the Indian Constitution that protects the right to life and personal liberties and by extension the right to marry.<sup>23</sup> In addition, by repeatedly recording the fact that Hadiya had been born into a Hindu household to Hindu parents, and by refusing to use her chosen Islamic name – Hadiya – the HC sought to question Hadiya’s decision to convert to Islam and thus undermined Hadiya’s freedom of religion as guaranteed under Article 25 of the Constitution.

Unsurprisingly, in May 2017, the HC decided to allow Asokan’s writ petition. The judges also directed the police to escort Hadiya from her hostel to her father’s residence. They further declared her marriage to Shafin Jahan to be null and void, asserting that “[t]he marriage which is alleged to have been performed is a sham and is of no consequence in the eye of law.”<sup>24</sup> Mercifully, the Court stopped short of declaring Hadiya a Hindu.

#### D. The public perception of the case

After the Kerala HC judgement, the leading Indian English daily newspaper, *The Times of India*, ran with the headline “Kerala HC cancels marriage due to bride’s alleged IS links.”<sup>25</sup> The article was accompanied by an image of gun and rifle toting men dressed in black, with Arabic writing on the bandana of the face-mask-wearing-man in the foreground. The picture was clearly meant to stand for the faceless danger posed by Islamic terrorists to other communities, and particularly to defenceless Hindu women. As for Hadiya, the article did not once identify her by her chosen or birth name, she was instead reduced to being ‘the woman’.

23 Lata Singh v. State of UP (2006) 5 SCC 475. The right to marry under Article 21 was later upheld when Hadiya’s case reached the Supreme Court, Shafin Jahan v. Asokan K.M. and Ors., (2018) 16 SCC 368.

24 Asokan K.M. v. State of Kerala, (2017) 2 KLJ 974 [56].

25 *Mahir Haneef*, Kerala HC cancels marriage due to bride’s alleged IS links, *The Times of India*, 24 May 2017, <https://timesofindia.indiatimes.com/city/kochi/kerala-hc-cancels-marriage-due-to-bride-s-alleged-is-links/articleshow/58827953.cms> (last accessed on 23 Feb 2023).



Fig 1: Picture accompanying the article. Mahir Haneef, note 25.

Media reportage of the case increased dramatically when the case was brought to the Supreme Court (SC) in New Delhi. As the case travelled from the HC to the SC, it came to be popularly known as the “Kerala ‘love jihad’” case.<sup>26</sup>

Piedalue et al. who analysed the media coverage of the ‘*triple talaq*’ (instantaneous unilateral divorce) and *love-jihad* issues across 3 popular English language Indian newspapers, including *The Times of India*, over 7 months in 2017-18 found that while the coverage of both these issues coalesced around legal trials in that period – the case of *Shayara Bano v. Union of India* on *triple talaq*<sup>27</sup> and the *Hadiya* case respectively – they received very

26 For instance, see: Kerala “love jihad” case: Hadiya’s lawyer says she is entitled to make decisions about her life, *Hindustan Times*, 27 November 2017, <https://www.hindustantimes.com/india-news/hadiya-to-appear-in-supreme-court-today-the-case-so-far/story-dSctD5AduUs11h795cp0iP.html> (last accessed on 23 February 2023); *Swaminathan Aiyar*, Kerala “love jihad” case: The day choice was killed, *The Economic Times*, 5 December 2017, <https://economictimes.indiatimes.com/news/politics-and-nation/kerala-love-jihad-case-the-day-choice-was-killed/articleshow/61937254.cms> (last accessed on 23 February 2023); *Vijaita Singh*, NIA to file another report in “love jihad” case next week, *The Hindu*, 20 January 2018, <https://www.thehindu.com/news/national/kerala/nia-to-file-another-report-in-love-jihad-case-next-week/article22478712.ece> (last accessed on 23 February 2023).

27 *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

different treatment within the media. Echoing the broader Hindu nationalist position that seeks to ‘secularize’ Muslim personal law in a bid to ostensibly protect Muslim women from Muslim men, the papers seemed to frame the case for banning instant, unilateral, and irrevocable divorce in Muslim marriages i.e. the use of *triple talaq*, as one of ‘women’s rights’ and ‘gender justice’.<sup>28</sup> However, as the authors note, these ideas were absent in the media coverage of the Hadiya case which instead focused on the supposed conspiracy against Hindu women. Based on this observation, the authors argue that “[i]t is this dimension of “love jihad”— the notion of conspiracy and threat to nation — rather than women’s rights that attracts most attention from the courts, from Hindu nationalist politicians and activists, and from the media.”<sup>29</sup> Talk of rights, if any, in the context of the Hadiya case came to be limited to talk of individual’s rights but never particularly about women’s rights.

What makes this focus on ‘*love-jihad*’ as a presumed central element to the Hadiya case even more peculiar is the fact that no one disputes the chronology of events listed by the HC. And that timeline makes it clear that this was not a case of religious conversion for the sake of love: Hadiya had converted to Islam long before she met or married Shafin Jahan. By her own admission, she had met him on a marriage website for Muslims after she had already converted to the religion. If her conversion to Islam pre-dated her meeting her husband, how could theirs possibly be a case of *love-jihad*?

#### E. The Supreme Court judgment

In the Indian Supreme Court, Chandrachud J described the Kerala HC verdict as a ‘grievous miscarriage of justice’<sup>30</sup> and criticised the ‘paternalism’ that lay beneath the HC’s chosen constitutional interpretation. For him, Hadiya’s marriage and the writ petition for habeas corpus were distinct matters and the former should have had no bearing on the Court’s assessment of the latter.

Lamenting the decision of the High Court to annul Hadiya’s marriage and to side with a father who was against his adult daughter’s religious conversion and choice of spouse, Dipak Misra, the then Chief Justice of India (CJI), writing on behalf of himself and A.M. Khanwilkar J noted that: “The thought itself is a manifestation of the idea of patriarchal autocracy and possibly self-obsession with the feeling that a female is a chattel.”<sup>31</sup> The CJI further held that the HC had misunderstood the bounds of its jurisdiction of *parens patriae* and that it had no place in this case.

While the SC took care to recognise and record Hadiya by her chosen name, the judgment cannot be read as an unequivocal win for feminism or Hadiya herself. From the start, the SC had thought it fit to involve the National Investigation Agency (NIA), India’s

28 *Piedalue et al*, note 17, p. 743.

29 *Ibid.*, p. 752.

30 *Shafin Jahan v. Asokan K.M. and Ors.*, (2018) 16 SCC 368 397.

31 *Ibid* 378.

central counter-terrorism law enforcement agency established in 2008, in the case. While Shafin Jahan had brought the appeal to the Supreme Court, he was immediately put under the scanner and the NIA was tasked with investigating his alleged association with the organisation the Popular Front of India which has been accused of carrying out Islamic terrorism and forced religious conversions in the past.<sup>32</sup> And even though the SC eventually found in favour of Hadiya and upheld her marriage, it allowed the criminal investigation against Shafin Jahan to continue.<sup>33</sup> In many ways this judgment remains more threatening to feminism than the judgment of the lower court: By denouncing patriarchy and ostensibly finding in favour of Hadiya, the SC judges portrayed themselves as feminist allies, yet by allowing the criminal investigation to continue, they not only insidiously undermined Hadiya's decisions, but also revealed the shallowness of their feminist stance. As Ratna Kapur notes:

*"While the (Supreme) Court attempted to move away from infantilizing an adult woman who, it held, is entitled to marry whomsoever she wishes, at the same time, it implicitly reinforced the dominant understanding of women as victims, especially a converted Hindu woman, acting under false consciousness and therefore requiring greater scrutiny."*<sup>34</sup>

This conclusion is supported by Piedalue et al. whose analysis of the media coverage around the trial found that the NIA probe and mentions of terrorism and ISIS featured heavily in the media's analysis of the case.<sup>35</sup> The links between these accusations and the Hadiya case were legitimised and repeated in the public space, precisely because they were seen to be taken seriously by the highest court in the country. After the Supreme Court gave its decision in March 2018, the judgment was unanimously praised in the media, without much being made of the continuing scrutiny over Hadiya's personal life that the SC had inevitably sanctioned.

## F. The Re-written Feminist judgment

In the current volume, the feminist judges have chosen to provide a dissenting judgment to the second writ petition submitted before the Kerala High Court based on its incorrect application of the law. Following Katharine Bartlett, Urmila Pullat and Sandhya PR JJ

32 Explainer: What is the PFI and why it is perceived as a threat, The Economic Times, 1 October 2022, <https://economictimes.indiatimes.com/news/india/explainer-what-is-the-pfi-and-why-it-is-perceived-as-a-threat/articleshow/94584378.cms> (last accessed on 31 January 2023). In September 2022 the Indian Ministry of Home Affairs banned the group and its affiliates as an unlawful association for five years under the Unlawful Activities (Prevention) Act 1967.

33 Shafin Jahan v. Asokan K.M. and Ors., (2018) 16 SCC 368, 407.

34 Kapur, note 7, p. 422.

35 Piedalue et al., note 17, p. 752.

employ the feminist legal method of asking the ‘woman question’<sup>36</sup> to analyse how women may be disadvantaged through existing legal norms and concepts. While the marginalisation of women remains central to their examination of the silencing of Hadiya’s voice within the trial, they recognise that this sex discrimination is part of a larger scaffolding of marginalisation. Due to her relatively young age, and because of her status as a woman, a religious convert, a member of the minority religion, and a resident of a small town in India, the majority judgment in the High Court had firmly cast Hadiya in the role of a lesser citizen who is assumed to be rendered incapable of exercising her autonomy.

Their dissenting judgment also invites us to closely scrutinise the sexist and paternalistic language used in the original judgment, and it does so by quoting extensively from the latter. This method of using sizeable quotations not only serves to highlight the absurdity of the HC judgment and the use of language within it, but also underscores how easily an alternative judgment in favour of Hadiya could have been produced at the HC itself.

Using a shared methodology in their many and varied iterations global “feminist judgment-writing projects attempt to appropriate the power of law to qualify feminist knowledges, to provide alternative accounts within legal discourse, and to change legal doctrine.”<sup>37</sup> They usually do so by re-writing or adding a missing judgment to the most authoritative bench of a given case. I believe, that in Hadiya’s case, a rewritten Supreme Court judgment or even an additional SC judgment would have been particularly useful for the feminist project not only because of its ability ‘to change legal doctrine’ but more importantly by exposing the dangers of the ostensibly feminist stance that the SC claimed to occupy. While the HC judgment is obviously misogynistic and wallowing in patriarchal tropes, as shown in the previous section the Supreme Court judgment is far more harmful to feminist jurisprudence; for under the guise of feminism and respect for Hadiya’s choices the SC perniciously weakened Hadiya’s rights by sanctioning the intervention of the NIA and the continued surveillance of her married life.

In many ways, in their dissenting judgment Pullat and Sandhya PR JJ anticipate the Supreme Court judgment but offer Hadiya more protection than the actual SC bench did. They do so by refusing to expose Hadiya and her husband to continuing surveillance by the police and the NIA. The judgment instead holds that: “The majority judgment [in the HC] held that there would also be continued surveillance over Hadiya. We express our deep anguish over the same. We are of the view that restricting Hadiya’s movement is a gross violation of her right to life and personal liberty as guaranteed under Article 21 and Art 19(1)(d) of the Constitution of India.” Further, the feminist judges implicitly recognise the dangers of the Hindu-nationalist construct of *love-jihad* and place on record their fear of the role that the courts could play in “entertaining majoritarian mass hysteria and phobia.” They urge Indian courts to stop automatically scrutinising cases of religious conversion to

36 Katharine T Bartlett, *Feminist Legal Methods*, Harvard Law Review 103 (1990), pp. 837-849.

37 Rosemary Hunter, *The Power of Feminist Judgments?*, Feminist Legal Studies 20 (2012), pp. 135, 144.

Islam or inter-religious marriages as cases of indoctrination or proselytization as the courts have become habituated to do.

## G. Conclusion

Hadiya's case shows one of the ways in which disgruntled parents can successfully approach the courts in India in order to frustrate marital choices made by their adult daughters.<sup>38</sup> In this case both Hadiya's father and the Kerala High Court in the second writ petition characterised a 24-year-old woman as a vulnerable girl unable to consent to changing her religion or marrying a man of her choice. The waters of this case were further muddied by Hadiya's decision to convert to Islam. For in the present political climate in India this allowed the case to be cast as one of *love-jihad*, an idea that invoked the image of dangerous Muslim men preying on 'vulnerable' Hindu women, a notion implicitly accepted by the Kerala HC. While the Indian Supreme Court finally found in her favour and upheld her marriage, the fact that the latter allowed for continued surveillance of the couple, and that the media discourse on the case was overwhelmingly framed around concerns of *love-jihad* rather than women's rights, highlights how tenuous Hadiya's win really was. In the years since the SC judgment many Indian states have passed new laws against *love-jihad* and religious conversion for the purpose of marriage<sup>39</sup> that serve to further criminalise inter-religious love and marriage in India.



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38 For a discussion on this theme see *Pratiksha Baxi*, *Habeas Corpus in the Realm of Love: Litigating Marriages of Choice in India*, *Australian Feminist Law Journal* 25 (2006), p. 59.

39 For instance, see: The Uttarakhand Freedom of Religion Act, 2018; The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021; The Madhya Pradesh Freedom of Religion Act, 2021; Haryana Prevention of Unlawful Conversion of Religion Act, 2022; and The Karnataka Protection of Right to Freedom of Religion Act 2022.