



Defending democracy: Judiciary versus extreme nationalism in India

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Abstract

This article examines the critical role of the Indian judiciary in addressing the challenges posed by rising nationalist extremism. Through its powers of judicial review and Public Interest Litigation (PIL), the judiciary has intervened in significant cases to uphold constitutional values and protect fundamental rights. Landmark rulings on the Citizenship Amendment Act (CAA) reflect the judiciary's commitment to equality and non-discrimination, though political and social pressures often hinder these efforts. The analysis highlights the need for judicial independence, comprehensive anti-discrimination laws, and enhanced enforcement mechanisms. Drawing on innovative solutions from jurisdictions like Germany, Canada, the United States, and South Africa, the article proposes reforms to strengthen judicial responses to extreme nationalism. These include implementing robust anti-discrimination laws, proactive judicial interventions, and continuous monitoring. The article underscores the importance of public trust and global best practices in maintaining the judiciary's role as a guardian of constitutional values amidst rising nationalist sentiments. By adopting these measures, India can better safeguard democracy and protect minority rights against the pressures of nationalist extremism.

Keywords: Judiciary, Nationalist Extremism, Democracy, Human Rights, Constitution

Introduction

The judiciary in India serves as the cornerstone of the nation's democratic framework, ensuring the rule of law, safeguarding fundamental rights, and maintaining checks and balances among the branches of government. It operates independently to uphold justice and constitutional principles, often acting as a guardian against excesses by the executive and legislative branches. In the recent years, India has seen a significant rise in extreme nationalism, posing a substantial challenge to the judiciary's independence and effectiveness.

Extreme nationalism, characterised by fervent patriotism and often exclusionary ideologies, have increasingly influenced various aspects of Indian society and governance. This rise has been marked by a surge in populist rhetoric, policies that cater to majoritarian sentiments, and actions that undermine pluralism and secularism. The judiciary, in its role as the interpreter and enforcer of the Constitution, finds itself at the centre of this conflict, striving to balance national interests with the protection of individual rights and minority communities.

The importance of this topic lies in the potential erosion of judicial independence and the broader implications for India's democratic fabric. When extreme nationalism exerts undue pressure on the judiciary, it can lead to biased rulings, weakened enforcement of constitutional safeguards, and an overall decline in public trust in the legal system. Moreover, the negative role of media in this context cannot be ignored. Sensationalist and biased reporting often amplify nationalist agendas, creating an environment of hostility towards judicial interventions that counter such extremes. The media's portrayal of judicial decisions can shape public perception, sometimes undermining the judiciary's legitimacy and fostering a climate of intimidation.

Research Problem

The research problem addresses the growing conflict between the judiciary and extreme nationalism in India, a tension that poses a significant threat to the country's democratic principles. Extreme nationalism, marked by aggressive patriotism and often exclusionary ideologies, have increasingly influenced governance and societal attitudes. This influence challenges the judiciary's ability to operate independently and uphold constitutional values.

A key aspect of this problem is the undue pressure extreme nationalism exert on judicial decisions, which can lead to biased rulings and weaken the enforcement of constitutional safeguards. The judiciary, tasked with balancing national interests and protecting individual rights and minority communities, finds itself in a precarious position.

Moreover, the negative role of media aggravates this conflict. Sensationalist and biased reporting often amplify nationalist agendas, fostering an environment of hostility towards judicial interventions that counter such extremes. Media portrayals can shape public perception, sometimes undermining the judiciary's legitimacy and creating a climate of intimidation. This interplay between extreme nationalism and media influence complicates the judiciary's ability to function impartially and maintain public trust.

The significance of this research problem lies in its impact on the rule of law and the integrity of India's democratic framework. Understanding the dynamics between the judiciary, extreme nationalism, and media influence is crucial for developing strategies to uphold judicial independence and protect democratic values in the face of rising nationalist pressures.

Research Objective

The objective of the research is to analyse the impact of extreme nationalism on the independence and functioning of the judiciary in India. Specifically, this research aims to:

Examine the Influence: Investigate how nationalist movements and ideologies have influenced judicial decisions and the broader legal landscape in India.

Assess Judicial Independence: Evaluate the extent to which the judiciary has been able to maintain its independence and impartiality in the face of nationalist pressures.

Identify Key Cases: Analyse specific cases where nationalist pressures may have affected judicial outcomes, providing concrete examples of this influence.

Explore Implications: Discuss the impacts of these influences for the rule of law, idea of democracy, and human rights in India.

Suggest Solutions: Propose potential measures and reforms to strengthen the judiciary's independence and ensure it can effectively uphold constitutional values and protect the rights of all citizens.

By achieving these objectives, the research aims to provide a comprehensive understanding of the challenges faced by the judiciary in contemporary India and offer insights into how these challenges can be addressed to preserve the integrity of the legal system.

Research Methodology

This research will adopt a doctrinal methodology, relying heavily on secondary data to analyse the relationship between the judiciary and extreme nationalism in India. The doctrinal approach involves a detailed examination of existing legal texts, case law, scholarly articles, and other relevant documents to understand the legal principles and judicial decisions that shape this dynamic.

Literature Review

The Indian judiciary plays a crucial role in upholding constitutional values and protecting citizens' rights, but it faces significant challenges due to rising nationalist extremism. BareLaw (2023) highlights the judiciary's structure as the guardian of the Constitution, ensuring judicial review and maintaining governmental checks and balances. LAWutsmart (2023) elaborates on its responsibilities, including dispute adjudication, law interpretation, and rights protection, despite facing political interference and delays. The independence of the judiciary is debated, with DW (2023) and JURIST (2023) noting political pressures compromising its impartiality. Lawfare (2023) points out external pressures and internal inefficiencies eroding judicial independence. Nationalist extremism complicates judicial impartiality, with Ahmad and Yousuf (2022) discussing the support such ideologies receive from political leaders and South Asia Monitor (2023) emphasizing the judiciary's role in countering populist surges. The judiciary's responses to the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC), as discussed by Bhuvania (2020) and Human Rights Watch (2020), reflect its challenges in balancing secularism and equality. Media influence is significant, with Mukherjee (2019) and South Asian Voices (2023) addressing the impact of biased reporting on public perception and societal polarization. Comparative studies, such as those by the Migration Policy Institute (2020), suggest that robust legal frameworks and independent judicial systems in countries like Germany and the United States offer valuable lessons for India. Strengthening judicial independence and implementing comprehensive legal measures are essential for the judiciary to effectively

combat nationalist extremism and protect constitutional values in India.

Jurisprudential and legal theories

In addressing the challenges posed by extreme nationalism, the judiciary in India operates within a framework of established judicial and jurisprudential theories. This section explores these theories and principles, providing a foundation for understanding how the judiciary navigates the delicate balance between protecting constitutional values and addressing rising nationalist sentiments.

The Theory of Constitutionalism

Constitutionalism is a foundational theory that underpins the Indian judiciary's approach to safeguarding fundamental rights. It emphasizes the supremacy of the Constitution as the ultimate legal authority. According to Granville Austin, the Indian Constitution is based on the principles of justice, liberty, equality, and fraternity (Austin, 1999). The judiciary's role is to interpret and enforce these principles, ensuring that all laws and policies align with constitutional mandates.

Legal Positivism

Legal Positivism asserts that law is a set of rules and regulations created by legitimate authorities and should be applied as written, without consideration of moral or social implications. This theory is relevant in the context of the judiciary's role in interpreting and enforcing laws like the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC). The challenges arise when nationalist pressures push for interpretations that may deviate from strict legal positivism.

Natural Law Theory

Natural Law Theory holds that law should be based on moral principles inherent in human nature. This theory is crucial for understanding the judiciary's responsibility to protect fundamental rights and ensure justice. The conflict between nationalist policies, which often promote exclusionary and discriminatory practices, and the judiciary's role in upholding universal moral principles of equality and justice can be explored through this lens.

Critical Legal Studies

Critical Legal Studies (CLS) argues that law is not neutral but is influenced by social, political, and economic contexts. This perspective is useful for examining how nationalist ideologies impact judicial decisions and the broader legal system. CLS highlights the power dynamics and biases that can affect legal interpretations and the enforcement of laws, providing a framework for analysing the judiciary's struggle to maintain impartiality.

Legal Realism

Legal Realism suggests that judicial decisions are influenced by the personal experiences and biases of judges, as well as the social and political environment. It can be utilized to understand how nationalist sentiments and media influence might affect judicial behaviour and rulings. Legal realism emphasises the need to consider these external factors when assessing judicial decisions in a nationalist context.

Sociological Jurisprudence

Sociological Jurisprudence emphasizes on the relationship between law & society, arguing that laws should evolve to meet the needs of society. This theory is pertinent for discussing how the judiciary can adapt to the changing social dynamics brought about by rising nationalism while still protecting constitutional values and minority rights.

Results

Communal Violence

The data on communal violence in India from 2014 to 2023 reveals a troubling increase in incidents, particularly during key political events and policy changes. This trend underscores the growing influence of nationalist sentiments on communal harmony.

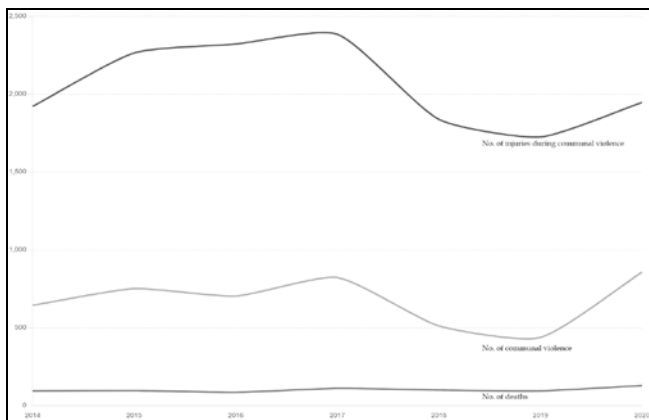


Fig 1: Communal violence in India between 2014-2020

Rising Trend: There has been a marked increase in communal violence incidents post-2014, with a significant spike in 2020, totalling 857 incidents. This increase is largely attributed to the Delhi riots and anti-CAA protests. [1]

Regional Hotspots: States like Uttar Pradesh, Bihar, Karnataka, and Delhi consistently report high numbers of communal violence. Delhi experienced 520 incidents in 2020 alone, followed by Bihar with 117 cases. [2]

Impact of Policies: The Citizenship Amendment Act (CAA) of 2019 has significantly triggered communal violence, particularly evident during the 2020 protests. The act's exclusionary nature towards Muslims has fuelled public unrest and violence.

Policy and Political Influence: The rise in communal violence is closely linked to political rhetoric and policies that embolden certain groups while marginalizing others, particularly religious minorities. [3]

The data indicates that extreme nationalism, driven by political and policy decisions, has significantly contributed to the rise in communal violence in India.

Discrimination Between Communities

Discrimination against religious and caste minorities in India remains a significant issue, exacerbated by nationalist policies and rhetoric.

Educational Discrimination: Marginalized groups like Dalits, Adivasis, and Muslims face segregation in

educational institutions, hindering their academic and social development. [4] High Dropout Rates: Dalit, tribal, and Muslim girls have dropout rates up to 64%, primarily due to socio-economic pressures and early marriage. [5]

Employment Discrimination: SC/ST workers earn significantly less than general caste workers due to discriminatory hiring and remuneration practices. [6]

Social and Economic Marginalization: Muslims face extensive discrimination in employment, education, and housing, exacerbated by Hindu nationalist policies. [7]

Religious Intolerance as Part of Extreme Nationalism

Religious intolerance in India, driven by extreme nationalism, often targets Muslim and Christian communities, leading to systemic discrimination and violence. [8]

Religious Segregation and Intolerance: A significant portion of Hindus who strongly associate Hindu identity with Indian identity believe it is crucial to stop Hindu women from marrying into another religion. [9]

Increase in Communal Violence: The 2020 report noted a significant increase in communal violence incidents, with 857 incidents reported compared to 438 in 2019. The CAA and NRC were key factors contributing to these tensions. [10]

Impact of CAA and NRC: The USCIRF report highlighted the potential for the CAA and NRC to expose millions of Muslims to the risk of statelessness, detention, and deportation, fostering an environment of religious intolerance.

Suppression of Dissent in India

The suppression of dissent in India has been a growing concern, particularly under the current administration.

Unlawful Activities Prevention Act (UAPA): There was a 72% increase in arrests under the UAPA between 2015 and 2019, with 98% of those arrested remaining in jail without bail. [11]

Sedition Law: Sedition cases have risen by 28% between 2010 and 2021, with 96% filed after 2014 against citizens criticizing the government. [12]

Internet Shutdowns: Frequent internet shutdowns, particularly in conflict zones like Jammu and Kashmir, significantly disrupt life and suppress dissent. [13]

IT Rules 2021: These rules mandate digital platforms to use automated tools for content moderation, leading to suppression of legitimate speech. [14]

Impact on Civil Liberties

India's civil liberties rating has declined, moving the country from "democracy" to a "hybrid regime." [15]

Harassment and Intimidation: Civil society members, journalists, and academics face harassment, surveillance, and imprisonment for criticizing the government, creating a climate of fear and self-censorship. [16]

Cultural Chauvinism

Cultural chauvinism has manifested through incidents of moral policing, vigilantism, and the imposition of Hindi, underscoring the rise of extreme nationalism. [17]

Language Imposition: Efforts to establish Hindi as the sole national language have led to backlash in non-Hindi-speaking regions.^[18]

Moral and Cultural Policing: Right-wing groups target youth, women, and artists, enforcing conservative cultural norms.^[19]

Vigilantism: Cow vigilantism has led to numerous attacks on Muslims and Dalits.^[20]

Marginalization of Minorities

Extreme nationalism has contributed to the increased discrimination and exclusion of religious and ethnic minorities.^[21]

Legislative Actions and Policies: The CAA and NRC have led to fears among Muslims about their citizenship status.^[22]

Social and Economic Marginalization: Minorities face significant barriers in employment, education, housing, and healthcare.^[23]

Incidents of Violence and Hate Speech: Cow-related violence and communal riots illustrate severe impacts of nationalist policies.

Educational Indoctrination

Nationalist sentiments increasingly shape educational content, promoting a biased historical narrative and marginalizing minority viewpoints^[24].

Revision of Textbooks: Textbooks have been revised to glorify Hindu achievements and downplay contributions of other communities.^[25]

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Influence on Curriculum: School curriculums emphasize Hindu cultural and religious superiority.^[26]

Vigilantism

Vigilantism, particularly cow protection vigilantism, has significantly impacted minorities, driven by nationalist sentiments.^[27]

Empowerment of Vigilante Groups: Some state governments have passed stricter cow protection laws, empowering vigilante groups.

High-Profile Incidents: Cases like the killings of Pehlu Khan and Akbar Khan highlight systemic issues in addressing such violence.^[28]

Political Exploitation

Political parties have heavily utilized media and publicity to propagate nationalist narratives, often marginalizing minorities.

Excessive Spending on Publicity: Between 2015 and 2020, political parties spent over ₹6,500 crore on elections.^[29]

Media and Publicity Strategies: Extensive use of media to reinforce nationalist ideology.

The data across these areas clearly indicates that extreme nationalism, driven by political and policy decisions, has led to significant societal and communal challenges in India.

Discussions

Judiciary's Role and Challenges

The judiciary in India upholds constitutional values and protecting the fundamental rights of all citizens, particularly in the face of rising nationalist extremism.^[30] However, this role is fraught with challenges, as the judiciary must navigate political pressures, public sentiment, and systemic biases. The Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC) are prime examples where the judiciary has had to balance these factors. The CAA, perceived as discriminatory against Muslims, has led to widespread protests and legal challenges, putting the judiciary in the spotlight to defend secularism and equality.^[31]

Communal Violence and Judicial Intervention

The data indicates a troubling rise in communal violence incidents post-2014, with significant spikes during politically sensitive periods. For instance, the 2020 Delhi riots, which coincided with anti-CAA protests, highlighted the judiciary's role in addressing mob violence and ensuring justice for victims. Despite the Supreme Court's directives to curb such violence, the implementation at the ground level remains inconsistent, leading to a perception of impunity among perpetrators^[32]. The judiciary's effectiveness is often hampered by delayed responses and the lack of stringent enforcement of its rulings^[33].

Vigilantism and Cow Protection Laws

Vigilante violence, particularly related to cow protection, underscores the influence of nationalist extremism in India. Reports by Human Rights Watch document numerous cases where vigilante groups have attacked individuals, predominantly Muslims and Dalits, under the pretext of protecting cows.^[34] These incidents, such as the lynching of Pehlu Khan and Akbar Khan, reveal a pattern of extrajudicial actions often carried out with tacit support from local authorities and political leaders. The judiciary's interventions in these cases are crucial for upholding the rule of law, but the lack of swift and decisive action undermines public confidence in the legal system.

Political Influence and Judicial Independence

The rise of nationalist extremism is often accompanied by political rhetoric that supports or even incites such sentiments. This creates a challenging environment for the judiciary, which must remain impartial while addressing cases influenced by political pressures. The judiciary's rulings on policies like the CAA and NRC are critical in maintaining constitutional integrity, but political backlash and societal divisions can complicate its task.^[35]

Negative Role of Media

The media in India has a significant impact on public perception and discourse around nationalist extremism. However, the role of media can be a double-edged sword. On one hand, responsible journalism can highlight injustices and hold perpetrators accountable.^[36] On the other hand, sensationalist and biased reporting can exacerbate communal tensions and influence public opinion against

minority communities. Instances of media bias and misinformation during the anti-CAA protests and communal riots have contributed to a polarised society, making the judiciary's role even more challenging.^[37]

Comparative Insights

Comparative analysis with other democracies reveals that robust legal frameworks and independent judicial systems are essential in combating nationalist extremism. Countries like Germany and the United States have established mechanisms to address hate crimes and protect minority rights, offering valuable lessons for India. Implementing similar measures can strengthen India's judicial response to extremist ideologies and ensure the protection of constitutional values.^[38]

Recommendations

Some of the innovative solutions from leading jurisdictions provide cue to Indian judiciary and law makers to address the challenges of extreme nationalism. These are highlighted below:

Germany: Legal Framework and Educational Initiatives

Strong Anti-Discrimination Laws: Germany's General Equal Treatment Act (AGG) provides comprehensive legal protections against discrimination based on race, religion, and ethnicity. This act is rigorously enforced to ensure nationalist extremism does not undermine constitutional values.^[39]

Education and Public Awareness: Germany implements extensive educational programs promoting tolerance and understanding, including Holocaust education and democratic values in schools.^[40]

Canada: Multicultural Policies and Legal Reforms

Multiculturalism Act: Canada's Multiculturalism Act promotes the integration and acceptance of diverse cultures, which helps mitigate nationalist extremism.^[41]

Judicial Training: Canadian judges receive training on cultural competence and implicit bias, ensuring fair and impartial judgments.^[42]

United States: Civil Rights Protections and Judicial Independence

Civil Rights Act: The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, or national origin, providing legal recourse against nationalist ideologies.^[43]

Independent Judiciary: The U.S. maintains a robust system of judicial independence, supported by checks and balances, allowing judges to make impartial decisions without political interference.^[44]

South Africa: Constitutional Protections and Social Dialogue

Progressive Constitution: South Africa's constitution includes explicit protections against discrimination and guarantees the rights of all citizens. The Constitutional Court plays a proactive role in interpreting these protections^[45].

Truth and Reconciliation Commission: The TRC addressed past injustices and promoted national healing, fostering social cohesion and mitigating extremist sentiments.^[46]

Gaps in Indian legal framework to combat extreme nationalism

Legal Frameworks and Enforcement

Lack of Comprehensive Anti-Discrimination Laws: Unlike Germany and the United States, India does not have comprehensive anti-discrimination laws akin to the General Equal Treatment Act or the Civil Rights Act, which provide strong legal protections against discrimination.^[47]

Weak Enforcement Mechanisms: Enforcement of existing laws in India is often inconsistent, with delays and inefficiencies undermining the judiciary's effectiveness.

Judicial Independence and Capacity

Political Influence: Judicial appointments and promotions in India can be influenced by political considerations, compromising judicial independence.^[48]

Resource Constraints: Indian courts face significant resource constraints, including a high case backlog and inadequate infrastructure, limiting their capacity to address extremist challenges effectively.

Educational and Cultural Initiatives

Insufficient Civic Education: Unlike Germany, India lacks comprehensive educational programs that promote tolerance and democratic values extensively in schools^[49].

To effectively combat extreme nationalism, India could benefit from adopting and adapting innovative solutions from other jurisdictions. Strengthening anti-discrimination laws, ensuring judicial independence, enhancing enforcement mechanisms, and implementing extensive civic education programs are crucial steps towards addressing the challenges posed by extreme nationalism.

By learning from global best practices, India can bolster its judiciary's capacity to uphold constitutional values and protect the rights of all citizens.

Conclusion

The Indian judiciary plays a vital role in defending against extreme nationalism, upholding constitutional values, and protecting fundamental rights. Through judicial review and Public Interest Litigation (PIL), it has addressed significant cases like the Citizenship Amendment Act (CAA) and the National Register of Citizens (NRC), demonstrating its commitment to equality and non-discrimination. However, the effectiveness of judicial interventions has been inconsistent, often hindered by political and social pressures.

Strengthening judicial independence is essential for the judiciary to function impartially and curb extreme nationalism. This involves ensuring adequate resources, reducing case backlogs, protecting judicial autonomy, and ensuring unbiased judicial appointments. Safeguarding the judiciary from political and social pressures is crucial for maintaining its independence and capacity to enforce rulings.

Comparative insights from other countries provide valuable lessons for India. Germany's anti-discrimination laws and

civic education programs, Canada's multicultural policies and judicial training, the United States' civil rights protections and judicial independence, and South Africa's constitutional protections and Truth and Reconciliation Commission serve as effective models. Implementing similar measures in India can significantly enhance the judiciary's ability to address challenges posed by extreme nationalism.

The judiciary's future ability to uphold constitutional values amidst rising nationalism depends on several factors:

1. Judicial Reforms: Enhancing independence, capacity, and effectiveness.
2. Public Trust and Engagement: Building trust through transparent and fair judicial processes.
3. Learning from Global Best Practices: Adopting best practices from other democracies.
4. Continuous Monitoring and Adaptation: Monitoring judicial decisions' impact and adapting strategies to new challenges.

By addressing these areas, the Indian judiciary can strengthen its role as a guardian of democracy protecting citizens' rights against the pressures of nationalist extremism.

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