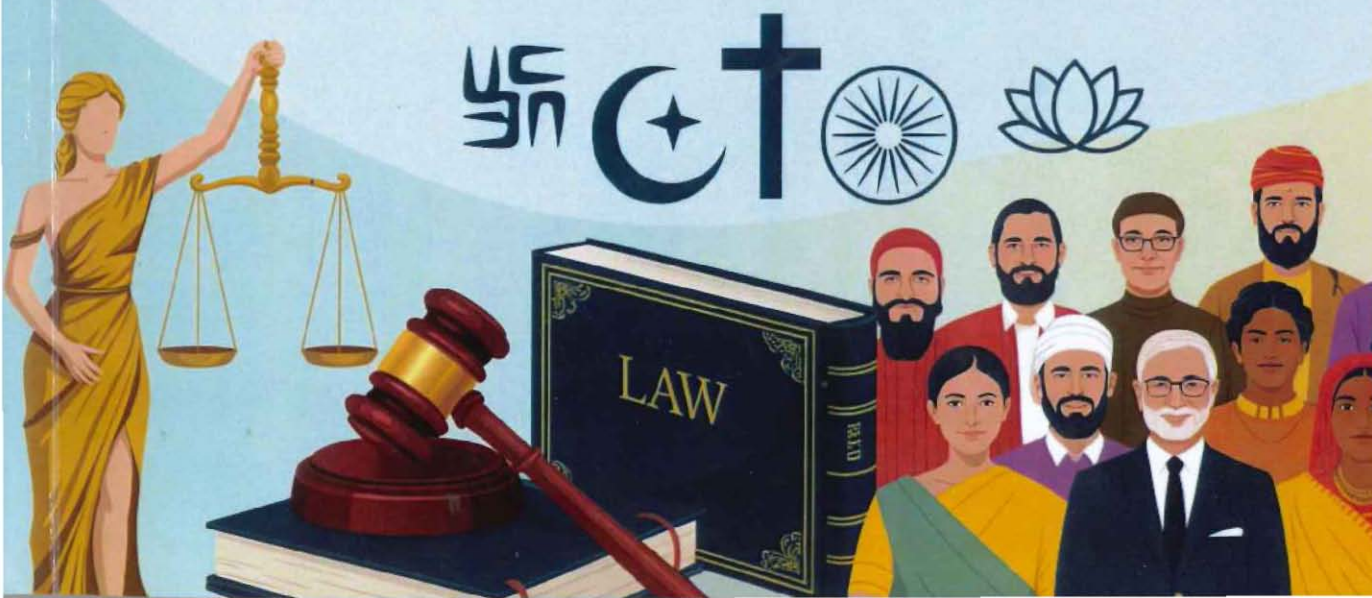


ONE NATION, CIVIL LAW?

Debating the Uniform Civil Code

By :- ADV. AMANDEEP KAUR,
DR. MANAVPREET KAUR DHINDSA



One Nation, One Civil Law?

Debating Uniform Civil Code

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**Adv. Amandeep Kaur
Dr. Manavpreet Kaur Dhindsa**

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EDITORS

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Reconciling Unity and Diversity: The Implications of the Uniform Civil Code on Secularism in India

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Abstract

The Uniform Civil Code (UCC) controversy in India is a complicated and multidimensional matter that lies at the nexus of national integration, religious freedom, and constitutional principles. The ramifications of enacting a UCC on India's secular framework—which is defined by the coexistence of many personal laws serving different religious communities—are critically examined in this study. Although a UCC is envisioned under Article 44 of the Indian Constitution as a way to advance gender justice and legal consistency, its implementation has frequently been opposed out of concerns about cultural homogenization and the degradation of minority rights. This paper investigates whether the UCC can be used to harmonize personal laws without compromising Indian society's pluralistic structure. By means of a doctrinal examination of constitutional provisions, seminal rulings, and comparative legal viewpoints, the research assesses whether a UCC and the secularism principle can coexist in a manner that honors both unity and diversity. The study makes the case for a consultative, well-rounded strategy that places a high value on legal fairness, inclusivity, and respect for India's varied culture. The study's ultimate goal is to offer a comprehensive understanding of how a UCC may support or contradict secularism in the biggest democracy in the world.

Keywords: Secularism, Personal Laws, Religious Freedom, Legal Pluralism, Gender Justice, Cultural Diversity, National Integration, Constitutional Morality.

1. Introduction of Uniform Civil Code in India: Constitutional Vision and Legal Pluralism

"A secular state is not hostile to religion but holds itself neutral in matters of religion, treating all religions equally."

Supreme Court of India in *S.R. Bommai v. Union of India*³⁸

³⁸ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

The concept of a Uniform Civil Code in India embodies the tension between preserving religious and cultural diversity and establishing a unified legal framework governing personal matters for all citizens³⁹. Article 44 of the Indian Constitution directs the State to endeavor to secure a UCC throughout the territory of India, aiming to replace the existing personal laws that vary across religious communities⁴⁰. These personal laws currently govern aspects of family law, including marriage, divorce, inheritance, and adoption, and are rooted in religious doctrines and customs⁴¹. The implementation of a UCC is envisioned to promote equality, social justice, and national integration by providing a common set of laws applicable to all citizens regardless of their religious affiliation⁴². The debate surrounding the UCC involves intricate considerations of secularism, religious freedom, gender equality, and minority rights⁴³.

The existence of diverse personal laws in India reflects the country's commitment to religious pluralism and the constitutional protection of religious freedom⁴⁴. However, these laws have been criticized for perpetuating discrimination, particularly against women, and for conflicting with fundamental rights enshrined in the Constitution. Some argue that personal laws, being based on religious texts and traditions, often lag behind contemporary societal values and fail to provide adequate protection to vulnerable groups within religious communities. For instance, discriminatory practices within certain personal laws may disadvantage women in matters of inheritance, divorce, and guardianship, thereby undermining their constitutional right to equality. The call for a UCC is often framed as a means to address these inequalities and ensure that all citizens are subject to the same legal standards, irrespective of their religious background. In the context of the ongoing discussions surrounding the enactment of a Uniform Civil Code, there appears to be an implicit assumption that the codified Hindu family law will serve as the foundation for such a code⁴⁵. Therefore, any evaluation of the potential impact of a Uniform Civil Code on Muslim women necessitates a thorough comparative analysis of Hindu and Muslim

³⁹ Kumari, A. K. (2007). In the Absence of a Uniform Civil Code, is the Special Marriage Act the Best Alternative for Women? SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.956233>

⁴⁰ Shukla, V. N. (2017). Constitution of India. <http://ci.nii.ac.jp/ncid/BA24682882>

⁴¹ Ahmed, F. (2016). Remedying Personal Law Systems: International Journal of Law Policy and the Family, 30(3), 248. <https://doi.org/10.1093/lawfam/ebw008>

⁴² Ibid

⁴³ Singh, K. (2024). Rethinking Secularism: An Inquiry into its Viability and Adaptation in the Indian Context. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.4853411>

⁴⁴ Sezgin, Y. (2010). How to Integrate Universal Human Rights into Customary and Religious Legal Systems? The Journal of Legal Pluralism and Unofficial Law, 42(60), 5. <https://doi.org/10.1080/07329113.2010.10756635>

⁴⁵ Agnes, F. (2016). Has the Codified Hindu Law Changed Gender Relationships? Social Change, 46(4), 611. <https://doi.org/10.1177/0049085716666635>

family laws, with a particular emphasis on matters of inheritance, marriage, divorce, and maintenance⁴⁶.

1.2 Contested Concerns: UCC's Potential Impact on Secularism and Minority Rights in India:

"The Uniform Civil Code is not merely a question of minority rights or religious freedom but also a constitutional directive aimed at national integration and gender justice."

Flavia Agnes, Legal Scholar and Feminist Activist⁴⁷

The proposition of a Uniform Civil Code in India elicits considerable debate, primarily centering on its potential ramifications for the nation's secular framework, particularly concerning the rights of minorities and the freedom to practice one's religion⁴⁸. Critics argue that imposing a uniform code could inadvertently encroach upon the diverse religious and cultural practices prevalent in India, potentially leading to the homogenization of laws at the expense of minority groups' distinct identities and customs⁴⁹. This apprehension stems from the belief that a UCC might disproportionately reflect the values and norms of the majority community, thereby undermining the secular principles that safeguard the interests of all citizens, irrespective of their religious affiliation⁵⁰. India's unique approach to secularism, which emphasizes the non-establishment of religion rather than a strict separation of religion and state, further complicates the discourse surrounding the UCC⁵¹. The recognition of diverse sexual orientations and gender identities, for instance, can challenge traditional heterosexual norms⁵². The fear is that a UCC, if not carefully crafted, could inadvertently perpetuate existing inequalities or introduce new forms of discrimination against marginalized groups⁵³. Constitutional morality, rather than mainstream views, should dictate the validity of laws⁵⁴. Laws must recognize identities,

⁴⁶ Herklotz, T. (2017). Law, religion and gender equality: literature on the Indian personal law system from a women's rights perspective. *Indian Law Review*, 1(3), 250. <https://doi.org/10.1080/24730580.2018.1453750>

⁴⁷ Flavia Agnes, "Muslim Women's Rights and Media Coverage," (2001) 36(44) *Economic and Political Weekly* 41.

⁴⁸ Mallick, S. (2024). The Constitutional Framework of Secularism in India: A Legal and Historical Perspective. <https://doi.org/10.2139/ssrn.4971354>, Also see Supra note 5.

⁴⁹ Supra note 1

⁵⁰ Supra note 7

⁵¹ Acevedo, D. D. (2012). Secularism in the Indian Context. *Law & Social Inquiry*, 38(1), 138. <https://doi.org/10.1111/j.1747-4469.2012.01304.x>

⁵² Agarwal, A., Sanyal, D., & Mukherjee, N. (2019). *Queering the Law: Making Indian Laws LGBT+ Inclusive*.

⁵³ Ibid.

⁵⁴ Johar, N. S., & India, U. O. (2018). *Navtej Singh Johar vs Union Of India Ministry Of Law*

including gender identities, to promote true emancipation⁵⁵. The heart of the debate lies in the interpretation of secularism within the Indian context, where religious freedom is enshrined as a fundamental right, allowing individuals to practice, profess, and propagate their faith without undue interference from the state⁵⁶. The implementation of a UCC, therefore, necessitates a delicate balancing act to ensure that the uniformity of laws does not infringe upon the constitutional guarantees of religious freedom and cultural expression. The Constituent Assembly deliberated on the concept, envisioning a unified legal framework applicable to all citizens⁵⁷. However, the inclusion of UCC in the Directive Principles of State Policy, rather than as a fundamental right, reflects the complexities and sensitivities involved in its implementation. Concerns arise regarding the potential erosion of these protections if a UCC is perceived as imposing a singular set of rules that disregards the unique customs and traditions of various religious communities. The Constitution seeks to foster justice and accommodate cultural and ideological differences. It has been argued that the secular framework in India, influenced by Judeo-Christian perspectives, might inadvertently disadvantage Asiatic religions by favoring conversionary practices⁵⁸. Moreover, the debate extends to the codification of personal laws, which govern matters such as marriage, divorce, inheritance, and adoption, and are currently based on religious affiliations. The push for a UCC is often viewed as an attempt to modernize and streamline these laws, eliminating inconsistencies and promoting gender equality⁵⁹. While proponents argue that a uniform code would ensure equal treatment for all citizens, particularly women, and address discriminatory practices within personal laws, opponents fear that it could lead to the imposition of a dominant cultural ethos, thereby marginalizing minority communities.

1.3 Secularism's Implications: The Uniform Civil Code in India:

"Secularism in the Indian context does not mean irreligion, but equal treatment of all religions by the State."

Granville Austin, Constitutional Scholar⁶⁰

The Uniform Civil Code in India represents a complex intersection of legal reform and socio-political discourse, potentially reshaping the nation's secular fabric. The Indian Constitution envisioned a Uniform Civil Code as a directive principle, aiming to establish a

⁵⁵ Supra note 13.

⁵⁶ Jameel, A. (2024). Secularism and Religious Freedom in India: An Overview. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.4936106>

⁵⁷ Supra note 2

⁵⁸ John, A. V. (2019). Religious Freedom: Freedom of Conversion or Freedom from Conversion? International Bulletin of Mission Research, 45(4), 388. <https://doi.org/10.1177/2396939319882160>

⁵⁹ Supra note 13.

⁶⁰ Granville Austin, The Indian Constitution: Cornerstone of a Nation, (Oxford: Oxford University Press, 1966), p. 316.

common set of laws governing personal matters like marriage, divorce, inheritance, and adoption for all citizens, irrespective of their religious affiliations⁶¹. This aspiration, however, has remained a contentious issue, stirring debates about its impact on religious freedom and cultural identity. Implementing a Uniform Civil Code is argued to foster gender equality by eradicating discriminatory practices embedded in various religious personal laws, potentially leading to a more just and equitable society⁶². The discourse surrounding the Uniform Civil Code frequently invokes principles of secularism, equality, and national integration. The existing framework of diverse personal laws, derived from religious customs, is perceived by some as a deviation from true secularism, as the state indirectly sanctions differential treatment based on religious identity⁶³. A uniform code, it is posited, would treat all citizens equally before the law, aligning with the secular ideal of state neutrality towards religion. The complexities of Indian secularism are manifested in the ongoing debates surrounding the Uniform Civil Code, a directive principle enshrined in the Constitution that advocates for a unified legal framework governing personal matters for all citizens, irrespective of their religious affiliations. The concept of secularism in India diverges from the strict separation of religion and state often associated with Western models⁶⁴. India's approach is characterized by "principled distance," where the state maintains neutrality while also having the option to intervene in religious matters to promote social justice and equality⁶⁵. This nuanced understanding of secularism shapes the debate on the Uniform Civil Code. Some interpretations suggest that the Uniform Civil Code would undermine religious freedom, a fundamental right guaranteed by the Constitution. Critics argue that imposing a uniform code might lead to the homogenization of diverse religious practices and cultural identities, potentially alienating minority communities.

1.4 Secularism in India: A Constitutional and Legal Pluralism Perspective:

"The idea of a Uniform Civil Code is not to infringe upon religious freedoms but to ensure equality and justice in personal laws irrespective of religion."

Justice B.P. Jeevan Reddy (Chairperson, Law Commission of India)⁶⁶

The Indian Constitution embodies a commitment to secularism, aiming for state neutrality in religious matters while fostering religious tolerance and equal treatment for all religious groups⁶⁷. The concept of secularism in India differs significantly from Western models that advocate a strict separation between state and religion⁶⁸. India's approach

⁶¹ Supra note 1, Shukla, V. N. (2017). Constitution of India. <http://ci.nii.ac.jp/ncid/BA24682882>

⁶² Supra note 13.

⁶³ see Supra note 5

⁶⁴ see Supra note 12

⁶⁵ Supra note 17

⁶⁶ Law Commission of India, Consultation Paper on Reform of Family Law, (2018), p. 2.

⁶⁷ Taylor, P. M. (2005). Freedom of Religion. <https://doi.org/10.1017/cbo9780511616129>

⁶⁸ see Supra note 12

acknowledges the profound role of religion in personal lives, ensuring no discrimination and upholding religious freedom as a fundamental right⁶⁹. The Constitution's framers envisioned a society where every citizen could practice their faith without fear of coercion or discrimination, marking a significant departure from historical patterns of prejudice and dominance⁷⁰. This vision necessitates a delicate balance, maintaining state impartiality while actively engaging with religious diversity to promote inclusivity. The secular framework is designed to prevent the state from either endorsing or interfering with religious practices unless those practices violate public order, morality, or health. The development of secularism in India has been influenced by its unique socio-political context, characterized by a multi-religious population and a history of communal tensions. India's secularism seeks to harmonize diverse religious beliefs and practices within a framework of constitutional principles, striving to create a society where religious identities coexist peacefully and contribute to national unity. The Constitution's commitment to secularism is embedded in various provisions, including the Preamble, which declares India a secular republic, and the Fundamental Rights, which guarantee religious freedom to all citizens⁷¹. The challenge lies in translating these constitutional ideals into tangible realities, addressing persistent inequalities and prejudices that undermine the secular fabric of the nation. The constitutional guarantee of equality before the law and equal protection of the law is essential, but the realization of this vision requires a commitment to constitutional morality among the members of society⁷²(Johar & India, 2018).

The judiciary has played a crucial role in interpreting and shaping the contours of secularism in India, with landmark judgments that have clarified the relationship between the state and religion. Judicial pronouncements have addressed issues such as religious conversions, the management of religious institutions, and the compatibility of religious practices with constitutional values. These decisions reflect an ongoing effort to balance religious freedom with the need for social harmony and justice, often requiring courts to navigate complex and sensitive issues. The judiciary's role extends beyond merely interpreting the law; it also involves safeguarding the constitutional principles of secularism against potential encroachments from both the state and religious entities.⁷³ Courts are regularly called upon to resolve issues related to religion, their decisions significantly impacting religious conceptions and practices⁷⁴. The judiciary has been entrusted with the duty of strengthening constitutional morality⁷⁵. Legal pluralism, the coexistence of multiple legal systems within a single jurisdiction, presents both opportunities and

⁶⁹Supra note 17

⁷⁰ Supra note 15

⁷¹ Supra note 15

⁷² Ibid

⁷³ Tarabout, G. (2018). Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism. *South Asia Multidisciplinary Academic Journal*, 17. <https://doi.org/10.4000/samaj.4451>

⁷⁴ Supra note 15

⁷⁵ See Supra note 15

challenges for secularism in India. Different religious communities often adhere to their own personal laws governing matters such as marriage, divorce, inheritance, and adoption, creating a complex legal landscape. The recognition of these diverse legal systems reflects a commitment to cultural and religious diversity, but it also raises questions about gender equality, human rights, and the potential for conflicts between religious laws and constitutional principles. Balancing these competing considerations requires a nuanced approach that respects religious freedom while ensuring that fundamental rights are protected for all citizens. Gendering of laws is the norm and in many instances even desirable⁷⁶. However, laws that operate in the binary may automatically discriminate against identities such as transgender persons, who exist outside this binary⁷⁷.

1.5 Secularism in India: Meanings and Models:

The multifaceted nature of secularism in India necessitates a comprehensive exploration of its diverse interpretations and implemented models, moving beyond simplistic definitions to understand its intricate relationship with the nation's unique socio-political landscape. The concept of secularism, as enshrined in the Indian Constitution, seeks to establish a state that is neutral in matters of religion, guaranteeing religious freedom to all citizens and ensuring no discrimination based on religious beliefs⁷⁸. This foundational principle, however, has been subject to varying interpretations and applications throughout India's post-independence history, resulting in a complex and often contested understanding of what secularism truly means in the Indian context⁷⁹. The framers of the Indian Constitution aimed to integrate the new nation with principles of modernity and liberalism, ensuring citizen rights and fostering democratic participation⁸⁰. It was meant to reverse the socialization of prejudice, discrimination, and power hegemony in a disjointed society and to ensure liberty was no longer a privilege of a few⁸¹. The idea was to progressively transform society to be inclusive, and the constitution was transformative in that regard⁸². Rightly said by Tahir Mahmood, Constitutional Expert⁸³

"Diversity is the hallmark of Indian society; hence, enforcing uniformity in personal laws must not come at the cost of suppressing plural identities."

⁷⁶ Supra note 13.

⁷⁷ Ibid

⁷⁸ Supra note 17

⁷⁹ Supra note 9

⁸⁰ see Supra note 12

⁸¹ see Supra note 15

⁸² see Supra note 15

⁸³ Tahir Mahmood, *Uniform Civil Code: Fictions and Facts*, (Lucknow: Eastern Book Company, 2003), p. 24

India's approach to secularism distinguishes itself from Western models, particularly the strict separation of church and state prevalent in countries like France⁸⁴. Instead, India has adopted a model of "positive secularism" or "principled distance," where the state engages with religions to promote equality and social justice⁸⁵. This approach acknowledges the deep-rooted presence of religion in Indian society and seeks to create a framework where all religions can coexist peacefully and contribute to the nation's progress. Some scholars suggest the necessity of legal reforms, educational initiatives, and policy adjustments to reinforce India's secular structure, emphasizing the importance of promoting secular values, consistently enforcing civil laws across religious communities, and cultivating interfaith respect and dialogue⁸⁶. The values of a democracy need effort, practice, and experience to make the society work with those values and secularism. Understanding the Indian model of secularism requires an examination of its historical context, particularly the legacy of colonialism and the partition of India in 1947. These events left a lasting impact on the country's social fabric, fueling religious tensions and shaping the debate around secularism.

1.6 Indian Secularism and Minority Rights

The Indian model of secularism, diverging from the Western construct of a strict separation between state and religion, embraces a more nuanced approach characterized by principled distance. This unique adaptation acknowledges the pervasive role of religion in the personal lives of its citizens, ensuring religious freedom as a fundamental right while simultaneously precluding discrimination based on religious affiliation⁸⁷. The architects of the Indian Constitution aspired to integrate the nascent nation with principles of modernity and liberalism, establishing a governance framework that safeguards citizens' rights and fosters an environment conducive to democratic engagement⁸⁸. India, as a pluralistic society with a rich tapestry of religious beliefs, necessitated a secular framework that ensures state neutrality in religious matters, promoting religious tolerance and equal treatment for all religious groups⁸⁹. Furthermore, the concept of 'constitutional morality' is indispensable for a free government, requiring widespread diffusion throughout the community to ensure the practicality of free institutions⁹⁰.

The Indian Constitution enshrines several provisions aimed at protecting minority rights, including cultural and educational rights, as well as safeguards against discrimination⁹¹. These provisions reflect a commitment to creating a society where minority groups can

⁸⁴McClay, W. M. (2001). Two Concepts of Secularism. *Journal of Policy History*, 13(1), 47. <https://doi.org/10.1353/jph.2001.0026>

⁸⁵ Supra note 26

⁸⁶ see Supra note 5

⁸⁷ Supra note 17

⁸⁸ see Supra note 12

⁸⁹ Supra note 26

⁹⁰ see Supra note 15

⁹¹ *Ibid*

preserve their distinct identities while fully participating in national life⁹². The Constitution's emphasis on equality before the law and equal protection of the laws underscores the commitment to non-discrimination, aiming to create a society where every individual is treated fairly and equitably⁹³. The judiciary has played a pivotal role in interpreting and upholding these constitutional principles, often adjudicating cases that involve the intersection of religious freedom, minority rights, and secular governance⁹⁴. In certain instances, laws are intentionally designed to address the unique needs and vulnerabilities of specific gender identities, particularly women⁹⁵. The Fundamental Rights in India enshrined in Part III of the Constitution, guarantee civil liberties, ensuring that all Indians can lead their lives in peace and harmony as citizens. To fortify India's secular framework, comprehensive reforms across legal, educational, and policy domains are indispensable⁹⁶. Such reforms should focus on the following thrusts: Firstly, the enactment of a comprehensive anti-discrimination law that prohibits discrimination based on religion, caste, gender, and other protected characteristics in both the public and private sectors is needed. Secondly, investment in educational programs that promote interfaith dialogue, cultural understanding, and critical thinking skills should be expanded in order to foster a more inclusive and tolerant society⁹⁷. Thirdly, policies that promote equal access to economic opportunities, healthcare, and education for all citizens, regardless of their religious or social background should be implemented.

1.7 Legal Pluralism, Personal Laws, and the Uniform Civil Code in India:

Legal pluralism, a concept that acknowledges the existence of multiple legal systems within a single socio-political space, is a prominent feature of the Indian legal landscape, particularly in the realm of personal laws. This intricate interplay of diverse legal orders, often rooted in religious or customary traditions, governs various aspects of family life, including marriage, divorce, inheritance, adoption, and guardianship⁹⁸. India's experience with legal pluralism reflects a complex negotiation between the ideals of a unified legal framework and the constitutional commitment to religious freedom and cultural diversity⁹⁹. Understanding the dynamics of legal pluralism in India requires a nuanced appreciation of its historical context, constitutional underpinnings, and socio-political implications. The Constitution of India, while envisioning a secular state, also guarantees the right of religious groups to manage their own affairs in matters of religion, leading to the continued existence of distinct personal laws for different religious communities¹⁰⁰. The ongoing debate surrounding the Uniform Civil Code highlights the tensions inherent

⁹² Ibid

⁹³ Ibid

⁹⁴ Supra note 9

⁹⁵ Supra note 13.

⁹⁶ see Supra note 5

⁹⁷ see Supra note 15

⁹⁸ Supra note 3.

⁹⁹ Supra note 1

¹⁰⁰ Supra note 13.

in reconciling these competing constitutional principles and the challenges of balancing individual rights with community identity. The co-existence of secular and religious laws creates a complex interaction that affects fundamental rights and freedoms, with individuals employing various strategies to navigate the intricacies of personal law¹⁰¹. Within this intricate framework, religious personal laws are significant, yet the judiciary has the power to interpret and apply these laws, often leading to interpretations that align with constitutional principles and human rights standards¹⁰². While these personal law systems remain in place due to intricate political considerations, attempts to reform them have been largely unsuccessful¹⁰³. Legal pluralism, in the Indian context, arises from the historical and social realities of a diverse nation with multiple religious and cultural communities, further reflecting a commitment to protect the distinct identities and practices of these groups.

1.8 Evolution and Debate on the Uniform Civil Code in India: Historical Background, Case Laws, and Political Discourse:

The concept of a Uniform Civil Code in India entails a standardized set of laws governing personal matters such as marriage, divorce, adoption, inheritance, and other familial affairs for all citizens, irrespective of their religious affiliations¹⁰⁴. Despite its enshrinement as a directive principle in Article 44 of the Indian Constitution, its implementation has remained a contentious issue, deeply entrenched in historical, social, and political complexities. The ongoing debates surrounding the UCC often involve considerations of religious freedom, gender equality, and national unity, reflecting the diverse perspectives and interests within Indian society¹⁰⁵. The historical backdrop of the UCC is closely intertwined with the evolution of personal laws in India, particularly during the British colonial era, where distinct legal systems were established for different religious communities, primarily Hindus and Muslims¹⁰⁶. This differential treatment, while ostensibly respecting religious customs, also contributed to the perpetuation of social inequalities and discriminatory practices, particularly against women¹⁰⁷. The seeds of the UCC were sown during the debates in the Constituent Assembly, where prominent figures advocated for a unified legal framework to promote social justice and gender equality, though concerns were raised about its potential impact on religious minorities and their cultural identities¹⁰⁸. The debates highlighted the tension between the ideals of secularism and the protection of

¹⁰¹ Supra note 6

¹⁰² Identifying 'Doctrine': Tracing Theologisation in Legal Narratives of the Place of Worship in India (p. 121). (2020). <https://doi.org/10.1017/9781108886307.005>

¹⁰³ Supra note 3.

¹⁰⁴ Supra note 1.

¹⁰⁵ Supra note 3.

¹⁰⁶ Supra note 3.

¹⁰⁷ Supra note 8.

¹⁰⁸ Singh, P. (2021). Finding Foreign Relations Law in India: A Decolonial Dissent. In Cambridge University Press eBooks (p. 86). Cambridge University Press.

<https://doi.org/10.1017/9781108942713.006>

religious freedom, which continue to shape the discourse on the UCC to this day. Delving deeper into the Constituent Assembly Debates reveals a complex tapestry of opinions and perspectives on the UCC. While proponents like Dr. B.R. Ambedkar championed its adoption as a means to achieve social reform and gender justice, others expressed reservations about its potential to infringe upon the religious freedoms guaranteed under the Constitution. These debates underscored the fundamental dilemma of balancing individual rights with the collective interests of a diverse society. The Directive Principles of State Policy, including Article 44, are not enforceable by the courts; they were intended to serve as guiding principles for the state in formulating policies and laws. The inclusion of the UCC as a directive principle, rather than a fundamental right, reflected a compromise between these competing viewpoints, leaving its implementation to the discretion of future governments¹⁰⁹. Over the years, several landmark case laws have played a significant role in shaping the discourse on the UCC, with the judiciary often intervening to address issues of gender discrimination and social injustice within the existing personal laws.

Examining key case laws illuminates the judiciary's role in interpreting and applying personal laws, often highlighting inconsistencies and discriminatory practices. The Supreme Court, in particular, has consistently emphasized the need for reforms in personal laws to ensure gender equality and protect the rights of vulnerable groups. Cases like the *Shah Bano* case, *Mohd. Ahmed Khan v. Shah Bano Begum*, *Danial Latifi* case, and *Shayara Bano* case have sparked widespread debate and controversy, raising fundamental questions about the relationship between religious law, constitutional principles, and women's rights. These cases have underscored the challenges of reconciling religious customs with constitutional guarantees of equality and non-discrimination. The judiciary has acknowledged the evolving nature of society and the need to interpret laws in light of contemporary values, recognizing that interpretations should not impede social integration or retard progress¹¹⁰. Judicial activism has been crucial in safeguarding human rights and ensuring the well-being of marginalized communities, even when governmental actions fall short of these goals¹¹¹. The judiciary's perspective highlights the tension between preserving religious identity and upholding the principles of equality and justice. Former Chief Justice of India P.B. Gajendragadkar,¹¹² rightly stated that, "The purpose of Article 44 is to introduce a sense of national integration by establishing a common civil code, yet its implementation must be cautious and inclusive."

The Uniform Civil Code has become a recurring theme in Indian political discourse, often exploited for electoral gains and political mobilization. Political parties have adopted divergent stances on the UCC, reflecting their respective ideologies and electoral

¹⁰⁹ Supra note 2

¹¹⁰ see Supra note 15

¹¹¹ See Supra note 23

¹¹² P.B. Gajendragadkar, "Secularism and the Constitution of India," (1971) 10(2) Journal of Constitutional and Parliamentary Studies 1.

calculations. The UCC has often been framed as a tool for promoting national integration and social harmony, while critics argue that it could lead to the marginalization of religious minorities and the erosion of their cultural identities. The debate over the UCC has also become intertwined with broader issues of secularism, communalism, and identity politics, further complicating the political landscape. The politicization of the UCC has hindered efforts to achieve a consensus-based approach to its implementation, with different political actors often using it as a means to consolidate their support base. It is argued that gender inequality in property rights stems from cultural context rather than religious backing¹¹³. The enactment of a Uniform Civil Code is perceived by some as tacitly accepting Hindu family law, which may not address discriminatory aspects of Hindu cultural ethos¹¹⁴. The implementation of a UCC is a complex undertaking that involves navigating a multitude of legal, social, and political challenges.¹¹⁵

1.9 Uniform Civil Code, Minority Rights, and Religious Freedom in India

The discourse surrounding the implementation of a Uniform Civil Code in India has ignited complex debates concerning the rights of religious and cultural minorities, particularly in relation to the fundamental right to freedom of religion enshrined in Article 25 of the Indian Constitution¹¹⁶. The endeavor to establish a UCC, as envisioned by the Constitution, aims to create a unified legal framework governing personal matters such as marriage, divorce, inheritance, and adoption, transcending the diverse religious Personal laws currently in practice¹¹⁷. However, the potential ramifications of such a code on the distinct cultural and religious identities of minority communities have raised apprehension and resistance, engendering a critical examination of the intersection between legal uniformity and the preservation of religious freedoms¹¹⁸. The apprehension stems from the perception that a UCC, if not carefully crafted, could potentially encroach upon the religious customs and traditions of minority groups, thereby undermining their constitutional right to practice and propagate their faith¹¹⁹. Furthermore, the debate around the UCC is inextricably linked to the complex dynamics of identity politics in India, where religious and cultural identities often serve as rallying points for political mobilization and assertion¹²⁰. The concerns articulated by religious and cultural minorities regarding the UCC primarily revolve around the potential homogenization of laws, which they fear could lead to the erosion of their distinct religious practices and cultural traditions¹²¹. These

¹¹³ Saadiya. (2018). Muslim Personal Law And Gender Equality Concerns In India.

<https://doi.org/10.2991/iclj-17.2018.2>

¹¹⁴ Supra note 7

¹¹⁵ Htun, M., & Weldon, S. L. (2013). Politics of Women's Rights in Family Law: Religion, the State, and the Barriers to Reform. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2259288>

¹¹⁶ Supra note 17

¹¹⁷ Supra note 2.

¹¹⁸ Supra note 1.

¹¹⁹ Supra note 3.

¹²⁰ see Supra note 15

¹²¹ Supra note 3.

communities perceive the UCC as a threat to their autonomy in managing personal affairs according to their religious tenets, viewing it as an imposition of the values and norms of the majority community¹²². The intersection of the UCC with Article 25 of the Indian Constitution, which guarantees the freedom of conscience and the free profession, practice, and propagation of religion, is a critical point of contention¹²³. The fundamental question lies in determining whether a uniform civil code can be formulated in a manner that respects the religious freedoms guaranteed by the Constitution, or whether it would inevitably lead to the suppression of religious diversity and the infringement of minority rights. Concerns have also been raised by opponents of similar changes in other legal areas, leading to the questioning of whether they stem from a misunderstanding of core concepts¹²⁴. Some argue that Article 25 protects only essential religious practices, while others contend that it encompasses a broader range of customs and traditions that are integral to the religious identity of minority communities. The orthodox Hindu perspective on religious freedom, particularly as articulated in the UN Universal Declaration of Human Rights, expresses reservations about the Judeo-Christian origins or biases inherent in these secular frameworks, which they argue can erroneously presuppose similarities between Semitic religions and Hinduism, potentially disadvantaging Asiatic religions¹²⁵. Identity politics plays a significant role in the UCC debate, with various religious and cultural groups vying to protect their distinct identities and interests. The pursuit of individual autonomy, liberty, equality, recognition of identity, and privacy are the cornerstones of fundamental rights¹²⁶. Political parties often exploit these identities to mobilize support and consolidate their vote banks, further complicating the issue and making it difficult to arrive at a consensus. The rise of religious nationalism and majoritarianism has exacerbated these concerns, leading to a heightened sense of insecurity among minority communities¹²⁷. Some groups are concerned about discrimination and the repression of religious and cultural minorities. The Uniform Civil Code is viewed as a tool to assimilate diverse communities into a single national identity, potentially marginalizing those who do not conform to the dominant cultural norms.

In India, the search for identity is linked with constitutional concepts that ensure freedom of expression without fear, allowing individuals to express their identity with dignity¹²⁸. The implementation of a UCC necessitates a delicate balancing act between the goals of national integration and social reform, on the one hand, and the protection of religious freedoms and cultural diversity, on the other¹²⁹. Any attempt to impose a uniform code

¹²² Yeste, C. G., Mara, L. C., Botton, L. D., & Duque, E. (2022). Building a More Inclusive Workplace for Religious Minorities. *Religions*, 13(6), 481. <https://doi.org/10.3390/rel13060481>

¹²³ see Supra note 15

¹²⁴ Reyes, C. (2023). Emerging Technology's Unfamiliarity with Commercial Law. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4388919>

¹²⁵ Supra note 19

¹²⁶ see Supra note 15

¹²⁷ see Supra note 15

¹²⁸ see Supra note 15

¹²⁹ Supra note 13.

without taking into account the concerns and sensitivities of minority communities is likely to be counterproductive, leading to social unrest and further alienation. It is crucial to foster a climate of dialogue and mutual understanding, where diverse perspectives are respected and accommodated. The Constitution is a living document, capable of evolving to meet society's changing needs, and courts must uphold its principles¹³⁰. The focus should be on promoting gender equality and social justice within the framework of existing personal laws, while also exploring avenues for harmonization and reform through consensus-building and inclusive participation¹³¹. Moreover, any reform must also consider that complete gender neutrality in law may not always be desirable, as laws often need to account for specific gender identities to ensure substantive equality, recognizing that formal equal treatment may not always lead to true emancipation¹³². The judiciary plays a crucial role in interpreting the Constitution and safeguarding the rights of all citizens, including religious and cultural minorities. The judiciary is essential to upholding constitutional principles and protecting individual rights¹³³. The courts have consistently emphasized the importance of striking a balance between religious freedom and social reform, while also upholding the principles of secularism and non-discrimination¹³⁴. The concept of constitutional morality, which prioritizes constitutional values over societal norms, further supports the need to protect the rights of marginalized groups¹³⁵ (Agarwal et al., 2019). Judicial activism, aimed at promoting human rights, can play a crucial role in this process¹³⁶.

1.10 Gender Justice and Uniform Civil Code in India: Women's Rights and Feminist Perspectives:

The discourse surrounding the Uniform Civil Code in India is multifaceted, intricately weaving together the threads of women's rights, religious personal laws, and constitutional ideals¹³⁷. At the heart of the matter lies the quest for gender justice, a pursuit challenged by the diverse and often conflicting legal frameworks governing family matters such as marriage, divorce, inheritance, and adoption¹³⁸. Currently, these matters are regulated by personal laws that are rooted in religious traditions, leading to disparities in the rights and protections afforded to women across different religious communities¹³⁹. These personal laws, while reflective of distinct cultural and religious identities, have been criticized for

¹³⁰ see Supra note 15

¹³¹ see Supra note 5

¹³² see Supra note 15

¹³³ *Ibid*

¹³⁴ Supra note 9

¹³⁵ Supra note 13.

¹³⁶ Aithal, K. R. (2023). Judicial Activism — the Enforcement of Human Rights in India.

International Journal of Law and Social Sciences, 60. <https://doi.org/10.60143/ijls.v1.i1.2015.11>

¹³⁷ Supra note 1

¹³⁸ Supra note 8

¹³⁹ Tripathi, S. (2013). Empowerment of Women: An Urgency. Indian Journal of Public Administration, 59(2), 405. <https://doi.org/10.1177/0019556120130215>

perpetuating patriarchal norms that disadvantage women, thus impacting their socio-economic standing and overall well-being¹⁴⁰. The existing personal law systems in India, though diverse, often share common threads of gender inequality¹⁴¹. Hindu law, despite reforms, continues to exhibit biases in property rights, particularly for women in joint family structures¹⁴². Practices such as *kanyadaan*, the concept of daughters being considered *paraya dhan* (belonging to another), and the emphasis on virginity in brides perpetuate societal pressures and discriminatory norms¹⁴³. Muslim personal law, governed by the Shariat Act of 1937, has been under scrutiny for provisions concerning divorce, polygamy, and inheritance, which are perceived as less favorable to women¹⁴⁴. Christian personal law, regulated by the Indian Christian Marriage Act and the Indian Divorce Act, has also faced criticism for its cumbersome divorce procedures and unequal property rights for women. These disparities highlight the urgent need for legal reforms that ensure substantive equality for women, regardless of their religious affiliation. It is also worth noting that gendering of laws is the norm and in many instances even desirable¹⁴⁵. For example, laws punishing sexual offences continue to be gendered, leaving out multiple identities from their scope of protection¹⁴⁶. Feminist perspectives on the Uniform Civil Code are diverse and nuanced, reflecting the complexities inherent in pursuing gender justice within a pluralistic society. While some feminists advocate for a UCC as a means to eradicate discriminatory practices embedded in religious personal laws, others express reservations about its potential to undermine religious freedom and cultural identity. A significant concern revolves around the potential for a UCC to be framed in a way that reflects the dominant patriarchal values of the majority community, thereby further marginalizing minority women. Many feminist scholars and activists emphasize the importance of ensuring that any move towards a UCC is preceded by comprehensive consultations with women from all religious communities, taking into account their lived experiences and diverse perspectives. Additionally, concerns have been raised about the potential impact of a UCC on the rights of transgender persons and individuals with non-heterosexual orientations, particularly if the code is based on hetero-normative assumptions¹⁴⁷. Therefore, some argue for focusing on reforming existing personal laws to align with constitutional principles of gender equality, while others advocate for an optional UCC that allows individuals to choose between personal laws and a uniform code. The concept of a Uniform Civil Code as a tool for gender justice hinges on its ability to address the systemic inequalities perpetuated by existing personal laws while respecting the fundamental rights and freedoms of all citizens. Ideally, a UCC should draw upon the best

¹⁴⁰ Supra note 3.

¹⁴¹ Supra note 3.

¹⁴² Mishra, A. (2015). Devolution of Property of the Hindu Female: Autonomy, Relationality, and the Law.

¹⁴³ Supra note 7

¹⁴⁴ See Supra note 70

¹⁴⁵ Supra note 13.

¹⁴⁶ See, Supra note 13.

¹⁴⁷ Agarwal, A., Sanyal, D., & Mukherjee, N. (2019). Queering the Law: Making Indian Laws LGBT+ Inclusive

practices from various legal traditions, incorporating principles of gender equality enshrined in international conventions such as the Convention on the Elimination of All Forms of Discrimination against Women¹⁴⁸. A gender-just UCC would ensure equal rights in marriage, divorce, inheritance, and adoption, eliminating discriminatory provisions that disadvantage women¹⁴⁹. It would also provide a framework for addressing issues such as marital rape, dowry, and domestic violence, which are often inadequately addressed under current personal laws.¹⁵⁰

1.11 Comparative Constitutionalism: France, Turkey, USA; Lessons and Cautions for India:

Comparative constitutionalism offers a valuable framework for understanding the strengths and weaknesses of different constitutional models, providing insights that can inform constitutional interpretation and reform¹⁵¹. The essence of comparative law involves scrutinizing the legal structures of various nations alongside one another, allowing for the identification of best practices and potential pitfalls¹⁵². This approach transcends mere description of foreign legal systems, aiming for a deeper understanding of the law in general¹⁵³. Comparative analysis seeks to uncover the shared foundations and potential strategies for resolving disparities among legal systems¹⁵⁴. Examining how other countries address similar constitutional questions can provide a broader perspective and potentially reveal innovative solutions¹⁵⁵. A comparative study centered on specific countries, issues, and practices illuminates the comparative argument's form, role, and quality¹⁵⁶. The United States, France, and Turkey offer distinct case studies in constitutionalism, each with its own

¹⁴⁸ Alfitti, A. (2014). Women's Rights And Gender Equality Issues In Islamic Law In Indonesia: The Need To Re-Read Women's Status In The Islamic Religious Texts. *Mazahib*, 13(1).

<https://doi.org/10.21093/mj.v13i1.349>

¹⁴⁹ Vijayarasa, R. (2020). What is gender-responsive legislation? Using international law to establish benchmarks for labour, reproductive health and tax laws that work for women. *Griffith Law Review*, 29(3), 334. <https://doi.org/10.1080/10383441.2020.1853900>

¹⁵⁰ *International Journal of Law Policy and the Family*, 29(2), 149.

<https://doi.org/10.1093/lawfam/ebv003>

¹⁵¹ Singh, P. (2021). Finding Foreign Relations Law in India: A Decolonial Dissent. In Cambridge University Press eBooks (p. 86). Cambridge University Press.

<https://doi.org/10.1017/9781108942713.006>

¹⁵² Eberle, E. J. (2008a). The Method and Role of Comparative Law. *SSRN Electronic Journal*.

<https://doi.org/10.2139/ssrn.1265659>

¹⁵³ Kropholler, J. (1987). COMPARATIVE LAW, FUNCTION AND METHODS. In Elsevier eBooks (p. 52). Elsevier BV. <https://doi.org/10.1016/b978-0-444-86241-9.50023-3>

¹⁵⁴ Hoecke, M. V. (2015). Methodology of Comparative Legal Research. *Law and Method*.

<https://doi.org/10.5553/rem/.000010>

¹⁵⁵ Eberle, E. J. (2008a). The Method and Role of Comparative Law. *SSRN Electronic Journal*.

<https://doi.org/10.2139/ssrn.1265659>

¹⁵⁶ Bouzakis, S., & Koustourakis, G. (2002). The Comparative Argument in the Case of the Greek Educational Reform in 1997-1998. *Comparative Education*, 38(2), 155.

<https://doi.org/10.1080/03050060220140557>

historical context, philosophical underpinnings, and unique challenges. The United States, with its history of common law, displays an incremental approach to constitutional interpretation, where judicial precedent and practical experience heavily influence the development of legal principles. France, on the other hand, exemplifies a civil law tradition characterized by codified laws and a more structured approach to legal reasoning. Turkey presents a unique case, as it attempts to reconcile its secular constitution with a predominantly Muslim society, grappling with issues of religious freedom, secularism, and the role of the military in politics. Each of these nations offers distinctive lessons regarding the formation, amendment, and interpretation of constitutions. For India, a nation with its own unique history and challenges, comparative constitutionalism offers both valuable lessons and cautionary tales. India's constitution-making was a critical event and a unique experience in the global history of constitution-making and democracy¹⁵⁷. The Indian constitution reflects the aspirations of a diverse society seeking to forge a unified national identity while safeguarding fundamental rights and promoting social justice¹⁵⁸. The Indian Constitution was intended to undo the socialization of prejudice, discrimination, and power dominance in a fractured society¹⁵⁹. India can learn from the experiences of other nations, while also remaining mindful of its own specific context and avoiding the uncritical adoption of foreign models. Constitutional idealism is demonstrably growing, embedded in the theory of progress, abandoning the status quo, expanding inclusiveness, and constantly remembering the principle of fitting into the norm of change with a constitutional philosophy¹⁶⁰. Comparative constitutionalism enables nations to learn from one another's successes and failures in establishing and maintaining enduring constitutional frameworks¹⁶¹. Examining the US constitutional experience offers insights into the dynamics of federalism, judicial review, and the protection of individual liberties. The U.S. Constitution, forged in the crucible of revolution and compromise, established a system of separated powers and checks and balances intended to prevent tyranny and safeguard individual liberty¹⁶². The American model, with its emphasis on judicial review and an independent judiciary, serves as a potential blueprint for safeguarding constitutional principles. The United States' commitment to freedom of speech, religion, and assembly, as enshrined in the First Amendment, provides a valuable framework for protecting fundamental rights. The drafting of the United States Constitution was influenced by American Indian political philosophies, traditional tribal governmental structures, and ideas

¹⁵⁷ De, R., & Shani, O. (2023). Assembling India's Constitution: Towards a New History. *Past & Present*, 263(1), 205. <https://doi.org/10.1093/pastj/gtad009>

¹⁵⁸ see *Supra* note 15

¹⁵⁹ see *Supra* note 15

¹⁶⁰ *Ibid*

¹⁶¹ Shani, O. (2022). The People and the Making of India's Constitution. *The Historical Journal*, 65(4), 1102. <https://doi.org/10.1017/s0018246x21000856>

¹⁶² Starck, C. (2017). State duties of protection and fundamental rights. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 3(1), 20. <https://doi.org/10.17159/1727-3781/2000/v3i1a2882>

¹⁶³. However, the Indian constitution-makers, during its drafting, were aware of the wide gap between constitutional precept and reality¹⁶⁴. France's constitutional history provides insights into the challenges of building a stable constitutional order in the face of political and social upheaval. France's experience with constitutionalism has been marked by cycles of revolution, reform, and adaptation, offering India valuable insights into the challenges of creating a durable constitutional framework.

1.12 Critical Analysis of Uniform Civil Code in India: Constitutional Aspiration, Secularism, and Recommendations

The Uniform Civil Code in India represents a complex interplay of constitutional aspirations and political realities, sparking continuous debate regarding its feasibility and desirability¹⁶⁵. Article 44 of the Indian Constitution directs the State to endeavor to secure a UCC for all citizens, aiming to replace the diverse personal laws based on religious customs with a common set of rules governing marriage, divorce, inheritance, adoption, and maintenance¹⁶⁶. This directive, however, remains unfulfilled, caught in a web of socio-political sensitivities and concerns about religious freedom. The UCC is envisioned as a tool for promoting gender equality, social justice, and national integration by removing discriminatory practices embedded in religious personal laws¹⁶⁷. Yet, its implementation faces resistance from various religious groups who fear the loss of their distinct cultural and religious identities. The debate surrounding the UCC also highlights the tension between the traditional impulse to allow communities to manage their social lives and the modernist political value of the rule of law, which requires that one law apply to everyone¹⁶⁸. The compatibility of a UCC with secularism is a central question in the Indian context, where secularism is often interpreted as the state's neutrality towards all religions, rather than strict separation¹⁶⁹. India's constitutional framework of secularism seeks to maintain a delicate balance between religious freedom and state neutrality¹⁷⁰. Some argue that a UCC would be a step towards true secularism by removing religion from the realm of law and ensuring equal treatment for all citizens regardless of their faith¹⁷¹. However, others contend that imposing a uniform code might infringe upon religious freedom, especially if the code is perceived as being based on the values and practices of the majority religion. The concern is that a UCC could lead to the homogenization of laws, potentially undermining the cultural and religious diversity that India prides itself on. A

¹⁶³ Miller, R. J. (2016). American Indian Constitutions and Their Influence on the United States Constitution. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2739936>

¹⁶⁴ see Supra note 15

¹⁶⁵ see Supra note 15.

¹⁶⁶ Supra note 2.

¹⁶⁷ Supra note 7

¹⁶⁸ Kumari, A. K. (2007). In the Absence of a Uniform Civil Code, is the Special Marriage Act the Best Alternative for Women? SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.956233>

¹⁶⁹ see Supra note 15

¹⁷⁰ Supra note 9

¹⁷¹ Supra note 26

truly secular approach would necessitate a UCC that respects the fundamental rights of all citizens, including the right to practice and propagate their religion, while simultaneously addressing discriminatory practices within personal laws¹⁷². It is important to note that India's context differs greatly from Western models because religion plays a major role in people's personal lives. Thus, any understanding of secularism must accommodate the fact that the separation of religion and state is not complete¹⁷³.

To reconcile the constitutional aspiration of a UCC with the principles of secularism and religious freedom, it is crucial to adopt a nuanced and consultative approach. This approach must prioritize inclusivity and ensure that all stakeholders, including religious communities, women's rights organizations, and legal experts, are involved in the drafting and implementation of the code. The focus should be on identifying and eliminating discriminatory practices within existing personal laws, rather than imposing a completely uniform code that may be seen as insensitive to religious and cultural differences. The goal must be to establish a framework of laws that guarantees gender equality, protects vulnerable groups, and promotes social justice, while upholding the principles of religious freedom enshrined in the Constitution. It calls for reevaluating strategic priorities without resorting to historical simplifications, as secular politics must fight against uniformity and promote democratization¹⁷⁴. Moreover, any move towards codification needs to consider the codification of Muslim law and its effect on women's rights, as well as the consequences for the court system¹⁷⁵. Furthermore, reforms within existing personal laws should be encouraged as a progressive step towards a more equitable legal framework. This could involve amending discriminatory provisions related to inheritance, marriage, divorce, and adoption, ensuring that all citizens have equal rights and opportunities, irrespective of their religious affiliation. Alternative Dispute Resolution mechanisms, such as mediation and conciliation, can be utilized to resolve family disputes within a framework of state-recognized religious arbitration, providing a means of valuable recognition for religious identities, supporting religious practice and religious expression, promoting justice, and reducing discrimination¹⁷⁶. These mechanisms can offer culturally sensitive solutions while upholding constitutional principles of justice and equality¹⁷⁷. It is important to acknowledge that there are limitations of a legal system, and there is a need to make civil rights meaningfully accessible¹⁷⁸. Legal and structural mechanisms can only function effectively if the attitude and perception of people are changed¹⁷⁹.

¹⁷² see Supra note 5

¹⁷³ see Supra note 12

¹⁷⁴ See Supra note 42.

¹⁷⁵ Supra note 3.

¹⁷⁶ Yeste, C. G., Mara, L. C., Botton, L. D., & Duque, E. (2022). Building a More Inclusive Workplace for Religious Minorities. *Religions*, 13(6), 481. <https://doi.org/10.3390/rel13060481>

¹⁷⁷ Supra note 3.

¹⁷⁸ Supra note 13.

¹⁷⁹ Trust, N., Nepal, F., & Network, I. D. S. (2013). *The Situation Of Dalit Rural Women*.

In conclusion, the UCC in India presents a complex challenge that requires careful consideration of constitutional principles, religious freedoms, and social realities. A balanced and inclusive approach is essential to ensure that the UCC serves as a tool for promoting justice, equality, and national integration, without undermining the country's rich cultural and religious diversity. The judiciary cannot remain oblivious to the fact that the society is constantly evolving and many a variation may emerge with the changing times¹⁸⁰. Transformative constitutionalism fosters an environment where every individual has adequate opportunities to develop socially, economically and politically, while guarding against discrimination of any kind¹⁸¹. The Constitution would become a stale and dead testament without dynamic, vibrant and pragmatic interpretation¹⁸². To conclude the statement given by Policy Analyst Ramesh Thakur,¹⁸³

"Secularism and the Uniform Civil Code are not contradictory but complementary — both aim at a just, equal, and inclusive society."

¹⁸⁰ see Supra note 15.

¹⁸¹ *Ibid*.

¹⁸² see Supra note 15

¹⁸³ Ramesh Thakur, "UCC Debate: Between Reform and Respect," (1995) 30(23) Economic and Political Weekly 1293.