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+91 70421 48991
editor@ijlar.com
www.ijlar.com

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# Introduction

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# Preface

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## Description

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# SECULARISM IN INDIA AND THE UNIFORM CIVIL CODE: CONSTITUTIONAL PHILOSOPHY, JUDICIAL INTERPRETATION AND CONTEMPORARY DEVELOPMENTS

AUTHORED BY - PINKY PAWAR

## ABSTRACT

This research paper analyses the constitutional philosophy of secularism in India and its relationship with the Uniform Civil Code (UCC). Although the word 'secular' was inserted into the Preamble by the Forty-Second Constitutional Amendment Act, 1976, secularism has always been embedded in the constitutional structure through fundamental rights and judicial interpretation. The Indian model of secularism differs from strict Western separation models and instead adopts a framework of principled distance between religion and the state.

The debate surrounding the Uniform Civil Code has been a central constitutional question since the framing of the Constitution. Article 44 of the Constitution directs the State to endeavour to secure a Uniform Civil Code throughout the territory of India. While personal laws based on religion continue to regulate marriage, divorce, succession and family relations, judicial decisions and constitutional principles increasingly emphasise equality, gender justice and constitutional morality.

This paper focuses on two central aspects: the development of secularism as a constitutional doctrine through judicial interpretation, and the contemporary relevance of the Uniform Civil Code in light of recent developments such as the enactment of the Uttarakhand Uniform Civil Code Act, 2024. The study adopts a doctrinal research methodology relying on constitutional provisions, Supreme Court judgments, Constituent Assembly debates and scholarly writings on constitutional law.

# CHAPTER I: SECULARISM AS A CONSTITUTIONAL DOCTRINE IN INDIA

The principle of secularism forms one of the foundational pillars of the Indian constitutional framework.

Unlike certain Western countries where secularism implies a strict separation between church and state, the Indian Constitution adopts a model that respects all religions while ensuring state neutrality.

The constitutional basis of secularism can be found in several provisions. Article 14 guarantees equality before law, Article 15 prohibits discrimination on the basis of religion, and Articles 25 to 28 guarantee freedom of religion. Articles 29 and 30 protect the cultural and educational rights of minorities.

The Supreme Court has played a central role in defining the constitutional meaning of secularism.

In Kesavananda Bharati v. State of Kerala (1973), the Court established the Basic Structure Doctrine, holding that Parliament cannot amend the fundamental structure of the Constitution.

Subsequent decisions clarified that secularism is one of these essential features.

In S.R. Bommai v. Union of India (1994), the Court explicitly held that secularism forms part of the basic structure of the Constitution. The judgment emphasized that the state must treat all religions equally and cannot adopt policies that promote one religion over another.

Another dimension of Indian secularism is the balance between religious freedom and social reform.

The Constitution allows the state to regulate secular aspects of religious practices in order to ensure social welfare and gender equality.

The Supreme Court has frequently intervened when personal law practices conflict with

constitutional principles. In Mohd. Ahmed Khan v. Shah Bano Begum (1985), the Court granted maintenance to a divorced Muslim woman under Section 125 of the Criminal Procedure Code. The judgment emphasised that the constitutional commitment to equality and dignity applies to all citizens regardless of religion.

Similarly, in Sarla Mudgal v. Union of India (1995), the Court condemned the misuse of religious conversion for contracting a second marriage and highlighted the need for a Uniform Civil Code.

Later decisions such as Shayara Bano v. Union of India (2017) further reinforced the principle that personal laws cannot violate fundamental rights.

Other important constitutional judgments such as John Vallamattom v. Union of India (2003), Joseph Shine v. Union of India (2018), and the Sabarimala judgment in Indian Young Lawyers Association v. State of Kerala (2018) illustrate the judiciary's commitment to equality, individual dignity and constitutional morality.

These decisions demonstrate that Indian secularism is not merely a passive principle of neutrality but an active constitutional commitment to equality, pluralism and social justice.

## CHAPTER II: UNIFORM CIVIL CODE AND ITS IMPACT ON SECULARISM

Article 44 of the Constitution directs the state to endeavour to secure a Uniform Civil Code throughout the territory of India. Although the provision is part of the Directive Principles of State Policy and is therefore non-justiciable, it reflects the vision of the framers of the Constitution.

Dr. B.R. Ambedkar defended the inclusion of Article 44 in the Constituent Assembly by arguing that personal laws should not remain immune from legislative reform. A uniform civil law, according to him, would promote national integration and ensure equality among citizens.

Despite this aspiration, India continues to follow a pluralistic system of personal laws based on religious identity. Different communities are governed by separate laws relating to marriage,

divorce, inheritance and adoption. While this system reflects India's cultural diversity, it has also produced legal inconsistencies and gender-based inequalities.

A Uniform Civil Code is often advocated as a means of ensuring equality before the law and eliminating discriminatory provisions that exist within certain personal law systems. Women across religious communities have historically faced unequal treatment in matters such as inheritance and divorce.

Another argument supporting the UCC relates to national integration. Supporters contend that a common civil law would strengthen the idea of citizenship and reduce fragmentation caused by multiple legal systems based on religion.

Recent developments have revived the national debate surrounding the UCC. The state of Uttarakhand passed the Uniform Civil Code of Uttarakhand Act in February 2024. The legislation represents the first comprehensive attempt by a state government to implement a uniform family law framework applicable to residents irrespective of religion, subject to certain exceptions such as Scheduled Tribes.

The Uttarakhand UCC regulates matters including marriage registration, divorce procedures, inheritance rights and maintenance obligations. It also introduces provisions relating to the registration of live-in relationships. Supporters argue that the legislation promotes gender justice and legal clarity, while critics raise concerns regarding minority rights and cultural autonomy.

The enactment of the Uttarakhand UCC has therefore reignited the constitutional debate on whether India should adopt a nationwide Uniform Civil Code. A balanced approach would require extensive consultation, protection of cultural diversity and adherence to constitutional values of equality, liberty and dignity.

Ultimately, the goal of the Uniform Civil Code should not be cultural homogenisation but the creation of a fair and equitable civil law framework that applies equally to all citizens.

## CONCLUSION

Secularism and the Uniform Civil Code remain among the most debated issues in Indian constitutional law.

The Indian Constitution envisions a secular state that respects all religions while ensuring equality, dignity and freedom for every citizen.

Judicial interpretation has firmly established secularism as part of the basic structure of the Constitution. At the same time, disparities within personal law systems continue to challenge the realization of gender justice and equality.

The recent enactment of the Uttarakhand Uniform Civil Code represents a significant development in this constitutional debate. Whether similar reforms will be adopted at the national level remains uncertain, but the discussion reflects the continuing effort to harmonise cultural diversity with constitutional principles.

A carefully drafted and consultative approach to legal reform may allow India to reconcile pluralism with equality and strengthen the foundations of its constitutional democracy.

## FOOTNOTES

1. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
2. S.R. Bommai v. Union of India, (1994) 3 SCC 1.
3. Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.
4. Sarla Mudgal v. Union of India, (1995) 3 SCC 635.
5. John Vallamattom v. Union of India, (2003) 6 SCC 611.
6. Shayara Bano v. Union of India, (2017) 9 SCC 1.
7. Joseph Shine v. Union of India, (2018) 2 SCC 189.
8. Indian Young Lawyers Association v. State of Kerala, (2018) 10 SCC 1.
9. The Uniform Civil Code of Uttarakhand Act, 2024.
10. Constituent Assembly Debates, Vol. VII (23 November 1948).

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