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BALANCING RELIGIOUS FREEDOM AND SECULARISM UNDER THE INDIAN CONSTITUTION

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I. ABSTRACT

India is a religiously diverse country with a constitutional democracy that accommodates a wide range of faiths, beliefs, and cultural customs. Because of this diversity, the State has a major obligation to uphold equality, social peace, and the rights of minority communities while safeguarding religious freedom. Articles 25 to 28 of the Constitution ensure freedom of religion in order to accommodate such pluralism, while the larger constitutional framework, which is strengthened by secularism as a component of the fundamental structure, aims to preserve equality, fraternity, and national unity. However, in order to preserve constitutional balance, judicial action is often necessary when religious activities collide with fundamental rights, public order, morality, and social transformation. This study analyzes the judiciary's role in balancing these values, looks at whether freedom of religion and secularism are complementary or conflicting constitutional principles, and assesses whether the Uniform Civil Code (UCC) provides a constitutional solution to conflicts arising from different personal laws. It makes the case that secularism and religious freedom are complimentary ideals, with the judiciary upholding harmony through ideas like the basic structure concept, constitutional morality, harmonious construction, and the Essential Religious Practices doctrine. In order to show how various constitutional systems handle the relationship between religion and the state and to provide important lessons for India, the paper also looks at the constitutional framework, judicial developments, and comparative secular models of the United States, France, and Japan. The study comes to the conclusion that Indian secularism is better suited to the country's religiously diverse culture because it is based on positive secularism or principled distancing. In order to maintain a dynamic balance between religious liberty, secularism, and social reform, it further concludes that the Uniform Civil Code should prioritize gender justice, equality, and constitutional values while respecting religious heterogeneity. The study also examines how

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judicial interpretation and constitutional principles have changed to deal with modern issues brought on by religious plurality in a democratic society.

II. KEYWORDS

Secularism, Religious Freedom, Uniform Civil Code, Essential Religious Practices, Constitutional Morality.

III. INTRODUCTION

India is a constitutionally secular republic founded upon the ideals of justice, liberty, equality and fraternity. At the same time, it is one of the most religiously diverse societies in the world, where religion continues to influence personal identity, community life, social practices and civil relations. The Indian Constitution recognises this pluralistic character by guaranteeing freedom of conscience and the right freely to profess, practise and propagate religion under Article 25, while also protecting the autonomy of religious denominations under Article 26 and regulating the relationship between religion, taxation and education under Articles 27 and 28. These provisions demonstrate that religious freedom occupies a central place in India's constitutional framework.

However, the freedom of religion under the Indian Constitution is not absolute. It is expressly subject to public order, morality, health and the other provisions of Part III. This limitation reflects the constitutional understanding that religious liberty must coexist with equality, dignity, social reform and secular governance. The concept of secularism, though expressly inserted into the Preamble by the Forty-Second Constitutional Amendment Act, 1976, has been recognised by the judiciary as an inherent feature of the Constitution and as part of its basic structure. Indian secularism does not require strict separation between religion and the State; rather, it follows a model of principled neutrality or positive secularism, under which the State may intervene in religious matters when such intervention is necessary to secure constitutional values, social welfare and reform.

The relationship between religious freedom and secularism has therefore generated complex constitutional questions. Conflicts frequently arise when religious practices intersect with claims of equality, gender justice, public order, minority rights,

institutional autonomy and State regulation. The judiciary has played a significant role in resolving these conflicts through doctrines such as harmonious construction, constitutional morality and the Essential Religious Practices doctrine. Landmark decisions including *Shirur Mutt*, *S.R. Bommai*, *Shah Bano*, *Shayara Bano*, *Sabarimala* and the *Karnataka Hijab* case illustrate the evolving judicial effort to balance religious autonomy with the broader constitutional commitment to secularism and fundamental rights.

This research paper examines whether religious freedom and secularism under the Indian Constitution operate as conflicting principles or as complementary constitutional values. It analyses the constitutional provisions, judicial precedents and doctrinal developments that shape the balance between religion and the secular State in India. The paper also undertakes a comparative study of selected democratic models, including the United States, France and Japan, to understand how different constitutional systems regulate the relationship between religion and the State. Finally, it evaluates whether the Uniform Civil Code can serve as a viable constitutional mechanism for harmonising personal laws with equality, gender justice and secular governance, while preserving India's pluralistic identity.

The central argument of this paper is that religious freedom and secularism are not mutually exclusive under the Indian Constitution. Rather, they are interdependent principles that must be harmonised through constitutional interpretation, judicial restraint, State neutrality and respect for diversity. A balanced approach is essential to ensure that religious liberty is protected without permitting practices that undermine equality, dignity, fraternity or public order. In this sense, the Indian model of secularism seeks not to exclude religion from public life, but to ensure that all religions are treated with equal respect within the framework of constitutional supremacy.

A. Research Problem

Questions concerning religion and secular government have grown more prevalent in public conversation in India's current political and social climate. India is a multicultural nation with many different cultures, religions, and customs. Article 25 of the Constitution protects religious freedom. As acknowledged in the seminal ruling

of *Kesavananda Bharati v. State of Kerala* (1973)², secularism is a basic aspect of the Constitution under the Basic Structure Doctrine. Recent events, however, point to increasing conflicts between the secularism principle and religious freedom.

Recent constitutional disputes concerning religious expression, regulation of personal laws, and the extent of permissible State intervention, such as the Karnataka Hijab controversy, have reignited debates regarding the appropriate balance between religious freedom and secularism in India. These developments raise important questions concerning the limits of religious accommodation within a secular constitutional framework. Furthermore, incidents of religious intolerance and communal tensions witnessed in various parts of the world, including neighbouring countries such as Bangladesh, underscore the importance of developing constitutional mechanisms that effectively safeguard both religious freedom and secular values in diverse societies.

In this context, this research paper becomes necessary to examine the constitutional and judicial approach toward balancing religious freedom and secularism in India. It also explores possible solutions to address this imbalance, including comparative approaches adopted by other countries and the potential role of the Uniform Civil Code in maintaining harmony while preserving constitutional values.

B. Research Objectives

The researcher has formulated the following objectives:

1. To examine the constitutional evolution of religious freedom and secularism in India.
2. To analyse the constitutional provisions and principles governing the relationship between religious freedom and secularism.
3. To evaluate the judiciary's approach to balancing these concepts.
4. To assess possible constitutional mechanisms for harmonising religious freedom and secularism in India.

C. Research Questions

² *Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala and Anr* (1973) 4 SCC 225; AIR 1973 SC 1461.

1. To what extent can religious freedom be limited in order to preserve secular constitutional values?
2. What challenges does India face in balancing religious freedom and secularism?
3. What constitutional and policy measures can strengthen the balance between religious freedom and secularism in India?
4. How have Indian courts interpreted and reconciled conflicts between secularism and the right to freedom of religion?

D. Research Methodology

Using a doctrinal research technique, this study mainly relies on qualitative analysis of Indian constitutional provisions, court rulings, and legal principles pertaining to secularism and religious freedom. Primary sources, including the Constitution of India and legal doctrines, are analysed to understand the Indian context of religious freedom and secularism. Key judicial pronouncements, such as *S.R. Bommai versus Union of India* (1994)³ and *The Commissioner, Hindu Religious Endowments v. Shri Lakshmindra Tirtha Swamiyar of Shirur Mutt* (1954)⁴, are examined to contextualise the approach in balancing the freedom of religion and secularism.

Secondary sources, including scholarly articles, legal reports, and comparative studies on different constitutional approaches to the values, provide critical insights into how other countries deal with religious issues. This research emphasises a comparative analysis of selected democratic jurisdictions to identify alternative constitutional approaches towards accommodating religious diversity while preserving secular values. The study critically evaluates whether the Uniform Civil Code constitutes a constitutionally viable mechanism for reconciling religious freedom and secularism in India.

³ S.R. Bommai v. Union of India, 1994 SCC (3) 1

⁴ The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 AIR 282

IV. INTRODUCTION TO THE CONCEPT OF RELIGIOUS FREEDOM IN THE CONSTITUTION

Religion, in the etymological dictionary, derives from the word 'religio' which means a binding back or a binding strongly to one's faith. According to Durkheim, "religion is a unified system of beliefs and practices relative to sacred things, that is to say, things set apart and forbidden – beliefs and practices which unite into one single moral community called a Church."⁵ Robert Crawford, in his book *What is Religion*, defines religion as "a belief in God, who is the unconditioned ground of all things, and in spiritual beings, resulting in personal experience of salvation or enlightenment, communities, scriptures, rituals, and a way of life." Unlike Durkheim, Robert Crawford not only refers to God or gods, but also to the sacred things.

Religious freedom is a fundamental human right that encompasses both the individual dimensions and the collective dimensions, together these two facets ensure that faith can be held internally, shared openly, and practiced alongside others in a community. The individual dimension ensures that every person has the absolute right to freedom of conscience, right to personal practice, and right to proselytize. The communal dimension allows these believers to institutional autonomy, communal worship, right to religious institutions and right of a local community to associate with coreligionists across borders.⁶

Religious history was central to the inner history of the country's culture. It was a history of syncretism. At pre-independence era, people were intolerant against another religious beliefs and religious discrimination which escalated into religious riots. It was found that from 1671 to 1681, anti-Hindu religious policy and destruction of temples in Banaras and Narnaul in Aurangzeb era. Parsi-Muslim riots took place in 1851, 1857, 1874 and 1885. In the 1920s, the relationship between Hindu and Muslim communities deteriorated, in Bengal, Punjab and Multan.

The causalities among Hindus & Sikhs were higher than that of Muslims where many Hindus and Muslims were killed, their properties were destroyed, a large quantity of

⁵ Emile Durkheim, *The Elementary Forms of the Religious Life* 29 (4th ed. 1979).

⁶ Shaheela Khurshid, *From Religare to Rights: Analyzing Religious Freedom in a Global Context*, 7 Indian Journal of Law and Legal Research 648, 650-652

goods was looted. M.K. Gandhi felt the need for tolerance and he didn't want only one religion to flourish in India. In his words: "I do not expect India of my dream to develop one religion, i.e. to be wholly Hindu or wholly Christian or wholly Musalman, but I want it to be wholly tolerant, with its religions working side by side with one another".

Later, discussions in constituent assembly regarding the place of religion in independent democratic nation, some members proposed invoking the name of God in the Preamble, while others opposed it on the ground that religion should remain a matter of individual choice in a secular democracy. Similarly, proposals to explicitly include the word "secular" in the Preamble were also not accepted. Ultimately, the Assembly agreed on establishing a secular State that guaranteed religious freedom without identifying itself with any particular religion, thereby laying the foundation for India's unique model of secularism based on equal respect for all faiths.

The Indian constitution forbids discrimination based on religion, demands a secular state, and guarantees everyone the ability to freely profess, practice, and spread their faith. According to the constitution, religious organizations are entitled to own, acquire, and manage property, as well as to create and operate institutions for religious and philanthropic reasons. It prohibits the use of public funds to support any religion. "All persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion" in a way that does not negatively impact public order, health, or morals, according to Article 25⁷ of the Indian Constitution. It prohibits religiously motivated barriers to public or private establishments as well as government discrimination based on religion, including in the workplace. The Bharatiya Nyaya Sanhita's Section 298⁸ makes it illegal to destroy or damage places of worship.

Religious freedom, under the constitution, comes with some restrictions to maintain the unity and integrity of the country. Religious freedom is a fundamental right for citizens of democracies, but it is not an absolute right. The Indian Constitution's

⁷ INDIAN CONSTI. art. 25

⁸ Bharatiya Nyaya Sanhita, 2023, § 298, No. 45, Acts of Parliament, 2023 (India)

Articles 25(1)⁹ and 26¹⁰ state that the right to freedom of religion is contingent upon public order, morality, and health, as well as the other provisions of Part III.

At the same time, the judiciary secures essential religious freedom, that cannot be overlooked or removed, through the Essential Religious Practices Doctrine. The *Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt* (1954)¹¹ was the first instance in which the Hon'ble Supreme Court applied this approach. In this instance, it was determined that Article 25's definition of religion encompasses all fundamental religious rituals and activities. Personal status laws, however, create civil norms based on religion, faith, and culture for members of specific religious communities regarding marriage, divorce, adoption, and inheritance. Laws pertaining to Hindu, Christian, Parsi, Jewish, and Islamic personal status are accepted by the law and upheld by judges. However, state and federal laws as well as constitutional provisions are not superseded by these laws.

V. INTRODUCTION TO SECULARISM AS A SALIENT FEATURE OF THE CONSTITUTION

Its 1950 constitution creates a "sovereign, socialist, secular democratic state," making it a legally secular democracy. India boasts 22 official languages, thousands of ethnic groupings, and a long history of religious tolerance. Secularism has its way back to ancient India, in Santam dharma, they welcome different spiritual traditions and integrate them into a common mainstream.

The principle of non-violence and compassion in Jainism & Buddhism. Later, the Sufi and Bhakti groups united the diverse populations in medieval India as well, fostering love and harmony. The British authorities upheld religious equality rather than trying to keep religion and the state apart. They introduced uniform tax laws and regulations for all faiths. However, the British also pushed the notion of a divide-and-rule strategy, which caused the communities to become divided. Then upon, during the

⁹ INDIAN CONSTI. art. 25, cl. 1.

¹⁰ INDIAN CONSTI. art. 26

¹¹ The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 AIR 282

discussion on the Preamble on 17 October 1949, the Constituent Assembly witnessed significant debate regarding the place of religion in the Indian State.

Some members proposed invoking the name of God in the Preamble, while others opposed it on the ground that religion should remain a matter of individual choice in a secular democracy. Similarly, proposals to explicitly include the word "secular" in the Preamble were also not accepted. Ultimately, the Assembly agreed on establishing a secular State that guaranteed religious freedom without identifying itself with any particular religion, thereby laying the foundation for India's unique model of secularism based on equal respect for all faiths.¹²

The word 'secularism' is derived from the Latin word "seculum". The word 'secular' is associated with the things that are not religious and secular. Secularism defines the relationship between the state and religion. The western model of secularism is different from the Indian model of secularism. As to the western model of secularism, the state will not intervene in religious affairs and the laws made by the state shall not be affected by the religion. No religion will receive financial assistance or backing from the state. However, the state grants its citizens the right to practice any religion they choose, as well as the freedom to reject any particular religion.

Indian secularism, on the other hand, emphasizes greater equality between and within religions rather than religious segregation. In India, the state plays a positive role in matters of religion by regulating religious laws, establishing religious institutions, providing financial support for religious promotion, and protecting the liberty of minority communities in matters of religious and educational institutions. This is in addition to promoting the separation of religion from the state and individual liberty in matters of religion.

The 42nd Constitutional Amendment Act, 1976, during the National Emergency, added the term 'secular' to the preamble. It was done to reaffirm the principle of equal respect for all religions, which means neutrality in religious affairs without endorsing any faith. The following articles of the Indian Constitution show signs of

¹² Vidhi Chauhan, *Secularism and Right to Freedom of Religion in India*, 6 *Indian Journal of Law and Legal Research*, 1123- 1126

secularism. Article 14¹³ (Equality before law), Article 15¹⁴ (Prohibition of discrimination on grounds of religion, etc.), Article 16¹⁵ (Equality of opportunity in matters of public employment), Article 19¹⁶ (Right to assemble peacefully and without arms and to form associations or unions), Article 25¹⁷ (Freedom of conscience and free profession, practice, and propagation of religion), Article 26¹⁸ (Freedom to manage religious affairs), Article 27¹⁹ (Freedom to pay taxes for promotion of any particular religion), Article 28²⁰ (Freedom to attend religious instruction or worship in certain educational institutions), Article 44²¹ (Uniform civil code for citizens), and Article 51A(e)²² (promote harmony and the spirit of common brotherhood).

The judiciary also reaffirmed the values of secularism in its precedents. The Hon'ble Supreme Court of India ruled in *Kesavananda Bharati v. State of Kerala* (1973)²³ that secularism is an essential component of the constitution that the Parliament cannot change. The idea was further reaffirmed in the 1994 case of *S.R. Bommai versus Union of India*²⁴, where the Hon'ble Supreme Court ruled that a society's secular nature increases its diversity rather than turning it into an atheist society. The court emphasized that a secular country's laws treat all religions equally and do not favor or discriminate against any group of people. Furthermore, the Hon'ble Supreme Court held in *Stainislaus Rev. v. State of Madhya Pradesh* (1977)²⁵ that the fundamental right to "propagate" religion under Article 25(1) refers to disseminating its principles for the edification of others, but does not include a fundamental right to convert another individual.

¹³ INDIAN CONSTI. art. 14

¹⁴ INDIAN CONSTI. art. 15

¹⁵ INDIAN CONSTI. art. 16

¹⁶ INDIAN CONSTI. art. 19

¹⁷ INDIAN CONSTI. art. 25

¹⁸ INDIAN CONSTI. art. 26

¹⁹ INDIAN CONSTI. art. 27

²⁰ INDIAN CONSTI. art. 28

²¹ INDIAN CONSTI. art. 44

²² INDIAN CONSTI. art. 51A cl. e.

²³ *Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala and Anr* (1973) 4 SCC 225; AIR 1973 SC 1461.

²⁴ *S.R. Bommai v. Union of India*, 1994 SCC (3) 1

²⁵ *Rev. Stainislaus vs. State of Madhya Pradesh & Ors.*, 1977 AIR 908

Forcible or fraudulent conversions violate everyone's right to freedom of conscience, which is guaranteed by the Constitution. Furthermore, the Court upheld that state legislatures are fully competent to pass anti-conversion laws, as preventing deceptive or forced conversions directly protects "Public Order." These precedents show that the judiciary played the role to uphold the principle of secularism as an integral part of the Indian constitution which needs to be abide by all.

Secularism, basically, is a constitutional principle and part of Basic Structure Doctrine which imposes duty equally on the state and citizens of India to respect every religion. Additionally, the right to profess, practice, and propagate one's religion cannot conflict with morals, public order, or health. It forbids religiously motivated barriers to public or private establishments as well as discrimination by the government on the basis of religion, including in the workplace.²⁶

VI. HOW DOES THE CONSTITUTION BALANCE SECULARISM WITH RELIGIOUS FREEDOM?

India is a nation where many different religions coexist. It is also clear that religious minorities cause legal issues for both individuals and communities. At the national level, for instance, the Jain group is struggling to obtain minority status. A female Sikh applicant to a medical college sponsored by Sikhs is being turned down on an individual basis because her practices are not entirely Sikh. Many a time, politics involves favouritism toward a particular religion during elections, which hinders unity. Therefore, maintaining the values of both religious freedom and the state's commitment to a secular nation necessitates a careful balancing act. The balance is needed in order to maintain peace, harmony and brotherhood among the people of the nation to prevent destruction and massacre.

In India, the freedom of religion is a fundamental right. Secularism protects religious freedom and guarantees that the government does not favor any one religion over another or its citizens. The constituent assembly took a major step towards ensuring the balance between religious freedom and secularism through the articles in the

²⁶ Saroj Shekhar Mallick, *The Constitutional Framework of Secularism in India: A Legal and Historical Perspectives*, 7 Indian Journal of Law and Legal Research, 2313-2314

constitution with clear boundaries to use it. The Indian Constitution establishes a comprehensive framework for balancing religious freedom with secularism through various constitutional provisions.

Articles 14 and 16 guarantee equality before the law and prohibit discrimination, including on the grounds of religion, while Article 19 protects fundamental freedoms subject to reasonable restrictions. In order to ensure both religious liberty and state neutrality, Articles 25 to 28 explicitly protect the freedom of conscience, the right to profess, practice, and propagate religion, the autonomy of religious denominations, protection against taxation for the promotion of any particular religion, and regulation of religious instruction in educational institutions.

Additionally, Article 51A requires every citizen to uphold the constitutional values of unity and integrity, promote harmony, and preserve the spirit of common brotherhood that transcends religious differences. In contrast, Article 44 instructs the State to work toward a Uniform Civil Code in order to promote legal uniformity and social reform. Collectively, these provisions reflect the constitutional vision of maintaining a harmonious balance between individual religious freedom, equality, secular governance, and national integration.

The constitutional balance between religious freedom and secularism is further maintained through the social welfare and reform provisions under Article 25(2), which empower the State to regulate secular activities associated with religion in the larger public interest. Indian courts have consistently upheld that while religious beliefs and essential practices are constitutionally protected, the State may intervene where religious activities encroach upon public property, disrupt public order, or undermine the secular character of State institution. The Kerala High Court, in *Noorul Islam Samskarika Sangam, Thottakkad, Malappuram v District Collector, Malappuram and Others* (2022), considered the regulation of religious prayer halls and emphasised the need to prevent communal disharmony while balancing religious freedom with public order.

If the manuscript intends to rely on a later 2024 decision concerning unauthorised religious structures on government land, that decision should be cited separately and

should not be merged with the *Noorul Islam Samskarika Sangam* citation.²⁷ Similarly, the Madhya Pradesh High Court questioned the legality of temples within police stations, while the Rajasthan High Court upheld the prohibition on constructing religious structures in government premises. These decisions reinforce the principle that the State must remain religiously neutral and may regulate secular aspects of religious activities to preserve equality, public order, and the constitutional ideal of secularism. The Hon'ble Supreme Court of India has also affirmed that unauthorised religious constructions on public streets and government land cannot be permitted, thereby recognising that social welfare, public interest, and constitutional governance may justify reasonable restrictions on religious activities.

The Supreme Court used the harmonious construction doctrine in *Venkataramana Devaru versus State of Mysore* (1957)²⁸ to resolve an apparent conflict between Article 26(b), which gives religious denominations the authority to run their own religious affairs, and Article 25(2)(b), which gives the State the authority to enact social welfare and reform laws permitting all classes of Hindus to enter public temples. The Court held that while denominational temples possess autonomy in religious matters, such autonomy is subject to the State's constitutional power to promote social reform and eliminate discriminatory practices. Accordingly, Article 26(b) must be interpreted harmoniously with Article 25(2)(b), ensuring that denominational rights do not defeat the constitutional objective of equality and temple entry for all Hindus. The ruling continues to be a seminal example of the judiciary's function in striking a balance between religious freedom and secular and egalitarian constitutional principles.

In summary, citizens must exercise their faith in a way that does not negatively impact morality, public order, or health. A secular state is required under the constitution, which also guarantees everyone the freedom of conscience and the ability to openly profess, practice, and spread their religion, as long as public order, morality, and health are taken into account. Federal law gives the government the authority to

²⁷ *Noorul Islam Samskarika Sangam, Thottakkad, Malappuram v District Collector, Malappuram and Others* 2022 (5) KHC 595; 2022 LiveLaw (Ker) 457.

²⁸ *Sri Venkataramana Devaru and Others vs. The State of Mysore and Others*, 1958 AIR 255

outlaw religious groups that incite conflict between communities, engage in terrorism or sedition, or break regulations pertaining to foreign contributions.

VII. JURISPRUDENTIAL ANALYSIS OF CONFLICTING PRECEDENTS REGARDING SECULARISM AND RELIGIOUS FREEDOM

The relationship between religious freedom and secularism under the Indian Constitution has largely been shaped through judicial interpretation. Since the commencement of the Constitution, courts have played a crucial role in determining the scope of religious liberty and the extent of State intervention in religious matters. The judicial approach has not remained static; rather, it has evolved in response to changing constitutional values and social realities. While early decisions primarily focused on protecting the autonomy of religious denominations and preserving religious practices, later judgments increasingly emphasised equality, dignity, constitutional morality, and social reform. This evolution reflects the judiciary's continuous effort to balance individual and collective religious rights with the broader constitutional commitment to secularism and democratic governance.

The Supreme Court's jurisprudence on this issue may broadly be divided into three phases: the protection of religious autonomy, the development of the Essential Religious Practices doctrine, and the emergence of a rights-oriented approach based on constitutional morality and substantive equality. These judicial developments reveal that the Supreme Court has not adopted a single uniform standard in resolving disputes between secularism and religious freedom. While some decisions accord primacy to religious autonomy, others prioritise equality, constitutional morality, public order, and social reform, thereby giving rise to seemingly conflicting constitutional precedents.

Through the creation and implementation of the Essential Religious Practices (ERP) concept, the Supreme Court has attempted to define the constitutional bounds of religious freedom. The Supreme Court of India created the Essential Religious acts (ERP) concept, a judicially produced constitutional theory that separates acts that are fundamental to a religion from those that are purely secular, customary, or voluntary.

The doctrine was first articulated in *The Commissioner, Hindu Religious Endowments v. Shri Lakshmindra Tirtha Swamiyar of Shirur Mutt* (1954)²⁹, where the Court recognised the autonomy of religious denominations to determine their essential religious practices and held that only such practices deserve constitutional protection. While allowing the State to regulate secular and administrative aspects of religion, this method demonstrated judicial respect for religious autonomy. Later rulings, such as *Sri Venkataramana Devaru v. State of Mysore* (1957)³⁰, balanced denominational rights with the State's authority under Article 25(2)(b) to implement social welfare and reform initiatives.

Over time, however, the court progressively adopted a more interventionist approach by holding in cases such as *Mohd. Hanif Quareshi & Others versus The State of Bihar* (1958)³¹, *Dr. M. Ismail Faruqui versus Union of India* (1994)³², *Shayara Bano versus Union of India & Others* (2017)³³, and *Arjun Gopal and Others versus Union of India & Others* (2017)³⁴ that practices like cow sacrifice, triple talaq, mosque immunity from acquisition, and bursting firecrackers during Diwali were not essential religious practices or could be reasonably restricted in the interests of equality, public order, health, and constitutional morality. The judiciary's attempt to balance religious autonomy with the constitutional requirements of secularism, equality, social change, and fundamental rights is reflected in the ERP doctrine. The ERP concept has drawn criticism for compelling judges to make theological decisions, even while it has allowed courts to discern between secular customs and constitutionally protected religious practices. This continues to be one of the most contentious areas of Indian constitutional doctrine on religious freedom and has led to inconsistent judicial results.

The Indian judiciary has consistently played a transformative role in advancing constitutional reform and equality by ensuring that religious freedom is not invoked

²⁹ *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 AIR 282

³⁰ *Sri Venkataramana Devaru and Others vs. The State of Mysore and Others*, 1958 AIR 255

³¹ *Mohd. Hanif Qureshi & Others vs. The State of Bihar*, 1958 AIR 731

³² *Dr. M. Ismail Faruqui Etc. vs. Union of India and Others*, 1994 (6) SCC 360

³³ *Shayara Bano vs. Union of India and Others*, AIR 2017 SUPREME COURT 4609

³⁴ *Arjun Gopal and Others vs. Union of India & Others*, AIR 2018 SUPREME COURT 5731

to justify practices that violate fundamental rights. In *Mohd. Ahmed Khan v. Shah Bano Begum* (1985)³⁵, the Supreme Court prioritized gender justice over restricted personal law by upholding a divorced Muslim woman's entitlement to maintenance under Section 125 of the Code of Criminal Procedure. In *Shayara Bano versus Union of India & Others* (2017)³⁶, the practice of quick triple talaq was ruled unlawful because to its inconsistency with the values of equality and dignity, reiterating this rights-oriented approach. Similarly, in the *Indian Young Lawyers Association v. State of Kerala* (2018)³⁷ ruling, the Court ruled that denying women access to temples breached constitutional guarantees of equality, reaffirming that fundamental rights cannot be superseded by discriminatory religious practices.

At the same time, the judiciary has protected genuine religious and minority rights. In *Bijoe Emmanuel & Ors versus State of Kerala* (1986)³⁸, it safeguarded the freedom of conscience of Jehovah's Witness students, while *T.M.A. Pai Foundation & Ors versus State of Karnataka & Ors* (2002)³⁹ reaffirmed the constitutional autonomy of minority educational institutions under Article 30, subject only to reasonable regulation. Furthermore, the Supreme Court ruled in *S.R. Bommai versus Union of India*⁴⁰ that the State must remain impartial toward all religions and that secularism is a fundamental component of the Constitution. Collectively, these decisions demonstrate that the judiciary has sought to harmonise religious freedom with equality, minority rights, and constitutional reform by ensuring that neither religious practices nor State action undermine the core values of the Constitution.

The judiciary has consistently recognised that the freedom of religion guaranteed under Article 25 is not absolute and must be exercised subject to public order, morality, health, and the rights of others. A significant illustration of this approach is the *Karnataka Hijab Case (Smt. Resham versus State of Karnataka, 2022)*⁴¹, wherein the Karnataka High Court upheld the State's uniform policy in educational institutions,

³⁵ Mohd. Ahmed Khan vs. Shah Bano Begum and Ors., 1985 AIR 945

³⁶ Shayara Bano vs. Union of India and Others, AIR 2017 SUPREME COURT 4609

³⁷ Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors., AIR ONLINE 2018 SC 243

³⁸ Bijoe Emmanuel & Ors. vs. State of Kerala & Ors., 1986 SCR (3) 518

³⁹ T.M.A. Pai Foundation & Ors. vs. State of Karnataka & Ors., 2002 AIR SCW 4957

⁴⁰ S.R. Bommai v. Union of India, 1994 SCC (3) 1

⁴¹ Smt. Resham & Anr. Vs. State of Karnataka & Ors., WP 2347/ 2022 (Kant.) (India)

holding that wearing the hijab did not constitute an essential religious practice. The Court emphasised that institutional discipline, equality, and the secular character of public educational institutions may justify reasonable restrictions on individual religious expression.⁴²

The judgment remains under challenge before the Supreme Court. The courts have adopted a similar approach in matters concerning unauthorised religious structures on public land. The Bombay High Court ruled in *Jaago Nehru Nagar Residents Welfare Association v. Commissioner of Police (2025)*⁴³ that the use of loudspeakers is not a fundamental religious practice covered by Article 25 and ordered the Noise Pollution (Regulation and Control) Rules, 2000 to be strictly enforced. The Court noted that no religion requires actions that disrupt public order or negatively impact the health and welfare of others, citing other rulings such as *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association*⁴⁴. It further emphasized that in order to maintain equality before the law and secular administration, noise laws must be applied consistently to all religious communities.

At the same time, this shift has generated considerable academic debate. Critics argue that frequent judicial reliance on constitutional morality enables courts to review religious doctrines through constitutional standards, thereby expanding judicial discretion into theological questions. Supporters, however, contend that constitutional morality is indispensable in preventing discrimination and ensuring that religious freedom remains consistent with the guarantees of equality, dignity, and individual liberty. The challenge therefore lies in maintaining a balance between judicial activism and judicial restraint.

Nevertheless, the absence of a consistently applied constitutional standard has resulted in divergent judicial outcomes, particularly in cases involving essential religious practices and constitutional morality. This indicates that while Indian constitutional jurisprudence has successfully developed mechanisms for balancing

⁴² Aditya Raj, *Karnataka Hijab Ban Case : Balancing Religious Freedom (Article 25) with Uniform Dress Codes in Educational Institutions*, 7 Indian Journal of Law and Legal Research, 778- 781

⁴³ *Jaago Nehru Nagar Residents Welfare Association vs. Commissioner of Police and Ors.*, 2025 Supreme (Bom) 17

⁴⁴ *Church of God (Full Gospel) in India vs. K.K.R. Majestic Colony Welfare Association and Others*, 2000 AIR SCW 3089

religious freedom and secularism, further doctrinal clarity remains necessary to ensure greater consistency and predictability in constitutional adjudication.

VIII. PROS AND CONS OF AN IMBALANCE BETWEEN RELIGIOUS FREEDOM AND SECULARISM

Despite the constitutional recognition of both religious freedom and secularism, maintaining an equilibrium between these values remains one of the greatest constitutional challenges in contemporary India. Recent controversies relating to religious processions, communal violence, religious conversions, dress codes in educational institutions, and disputes concerning places of worship illustrate that constitutional guarantees alone are insufficient to ensure social harmony. Whenever either unrestricted religious assertion or excessive State intervention dominates, the constitutional balance envisioned by the framers becomes vulnerable, resulting in communal tension, unequal treatment, and erosion of public confidence in secular governance.

The communal violence that erupted in Nuh district of Haryana in July 2023 illustrates the constitutional consequences of failing to maintain a balance between religious freedom and secular governance. What began as a religious procession soon escalated into widespread communal clashes, resulting in loss of life, destruction of religious places, and damage to public and private property. Subsequent demolition drives targeting allegedly illegal structures attracted judicial scrutiny, with concerns being raised regarding procedural fairness and equal application of the rule of law. The incident demonstrates that when religious events become vehicles for communal mobilisation and administrative responses appear selective or disproportionate, both religious freedom and secular constitutional governance suffer. Rather than promoting harmony, such situations deepen mistrust between communities and challenge the State's constitutional obligation to maintain neutrality and public order.⁴⁵

⁴⁵ Dr. Madhusudan Dash Ambarish Mangaraj, Dr. Madhusudan Dash, *State Intervention in Religious Institutions: Impact on Governance and Legitimacy*, 20 Nanotechnology Perceptions, 3717-3718 (2024)

The practical disparity between religious freedom and secular governance is seen in the difficulties faced by religious minorities in India. The 1984 anti-Sikh riots, the 2002 Gujarat riots, the 2008 Kandhamal violence, and more recent communal disturbances are just a few examples of incidents of communal violence that have left impacted communities with long-term insecurity, displacement, and fatalities. Similar to this, claims of forced or fraudulent religious conversions have heightened discussions over the application of Article 25 and led to the passage of anti-conversion legislation in a number of states. The increasing incidence of hate speech, misinformation, and religious intolerance, particularly through digital platforms, has further aggravated communal polarisation and undermined the constitutional ideals of fraternity and secularism.

These developments indicate that constitutional guarantees alone are insufficient unless supported by impartial enforcement of the rule of law, equal protection of all religious communities, and a secular State that remains neutral while safeguarding both religious freedom and public order. At the same time, surveys indicate that an overwhelming majority of Indians believe they enjoy substantial freedom to practise their religion. At the same time, a significant proportion of respondents, particularly among religious minorities, report experiencing religious discrimination and express concerns regarding communal polarisation. This public perception regarding religious freedom also reflects this constitutional paradox. And also, disparities remain in their practical implementation across different regions and communities.

The recurring nature of such incidents demonstrates the persistent structural challenges in ensuring a harmonious balance between religious freedom and secular governance. While reasonable State regulation is constitutionally permissible under Articles 25 and 26, excessive intervention in religious affairs may itself disturb the constitutional balance between secular governance and religious freedom. One consequence is the increasing judicial determination of theological questions through the Essential Religious Practices (ERP) doctrine.⁴⁶ By requiring courts to decide which practices are "essential" to a religion, the doctrine places secular judges in the position

⁴⁶ Gayatri M Nambiar, *The ERP Doctrine in India: A Barrier or Protection for Religious Freedom*, 6 Indian Journal of Law and Legal Research

of interpreting religious scriptures and beliefs. Although this approach was developed to distinguish protected religious practices from secular activities, critics argue that it expands judicial authority into matters traditionally reserved for religious denominations, thereby reducing religious autonomy.

Another consequence is the growing preference for constitutional reform over religious autonomy in matters involving equality and social justice. Judicial decisions such as *Shah Bano*, *Shayara Bano*, and *Indian Young Lawyers Association (Sabarimala)* demonstrate that courts increasingly prioritise constitutional values of equality, dignity, and gender justice over discriminatory religious customs. While these interventions have advanced social reform and strengthened the protection of fundamental rights, they have also generated resistance among sections of religious communities who perceive such decisions as judicial intrusion into matters of faith. This continuing tension reflects the difficult task of reconciling constitutional morality with religious self-governance.

Excessive administrative regulation of religious institutions also raises concerns regarding institutional autonomy. Various State laws governing Hindu Religious and Charitable Endowments authorise governments to regulate the administration, finances, and management of Hindu temples with the objective of ensuring transparency and preventing mismanagement. Earlier, such regulation was frequently criticised as asymmetrical on the ground that minority religious institutions generally enjoyed comparatively greater administrative independence. However, this position requires qualification in light of the Waqf (Amendment) Act, 2025, which has substantially increased statutory oversight over waqf institutions and has narrowed, at least in part, the earlier claim of differential treatment.

The amendment introduced significant changes concerning the creation, registration, administration, and supervision of waqfs, including changes to the recognition of “waqf by user” and the composition of Waqf Boards and the Central Waqf Council. These amendments are themselves contested because critics argue that they may dilute minority institutional autonomy, while supporters present them as measures for transparency, accountability, and protection of public property. The constitutionality of the Waqf (Amendment) Act, 2025 is presently under challenge

before the Supreme Court in *In Re: The Waqf (Amendment) Act, 2025* and connected matters.

The Supreme Court's interim consideration has specifically included issues relating to "waqf by user," government-property disputes, and the composition of Waqf institutions, including non-Muslim representation. Therefore, the institutional-autonomy debate can no longer be framed simply as Hindu religious institutions being regulated while minority institutions remain largely independent. Rather, the contemporary position reflects a broader and actively contested trend of State regulation across religious institutions, raising a common constitutional question: how far the State may intervene for accountability and public interest without undermining the autonomy protected under Articles 25 and 26.

Similarly, legislative measures regulating religious conversions have generated concerns regarding their practical impact on religious liberty. To stop conversions through coercion, fraud, or seduction, a number of states have passed anti-conversion legislation.⁴⁷ While the objective of preventing coercive conversions is constitutionally legitimate, procedural requirements and broad statutory provisions may discourage voluntary conversions and legitimate religious propagation. Allegations of selective or discriminatory enforcement against minority communities may arise from such rules, which have the potential to stifle the exercise of freedom of conscience under Article 25.

It is submitted that the constitutional objective should be to strike a principled balance between individual fundamental rights and the collective autonomy of religious communities. Neither unrestricted religious autonomy nor excessive State intervention is consistent with the Indian model of secularism. While constitutional governance must protect equality, dignity, and public welfare, it must also respect legitimate religious autonomy. The effectiveness of Indian secularism ultimately depends upon maintaining a balanced constitutional framework in which neither individual freedoms nor community interests are disproportionately subordinated to the other.

⁴⁷ Ravina Gautam, *The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act: Examining the Role of State in Protecting Religious Freedom*, 7 Indian Journal of Law and Legal Research

IX. COMPARATIVE ANALYSIS OF DEMOCRATIC MODELS BALANCING RELIGIOUS FREEDOM AND SECULAR GOVERNANCE

Articles 25 to 28 of the Indian Constitution promote religious freedom while also making secularism a fundamental tenet of the document. Although these constitutional provisions establish a framework for balancing religious liberty with State neutrality, their practical implementation continues to generate constitutional and social challenges. In order to evaluate the strengths and limitations of the Indian model, it is useful to examine how other democratic countries reconcile religious freedom with secular governance.

Comparative constitutional analysis enables the identification of different approaches adopted across jurisdictions in regulating religion, protecting minority rights, maintaining public order, and preserving secular values. This chapter therefore examines selected democratic models to understand how global experiences may contribute to the continuing development of Indian constitutionalism while remaining consistent with India's unique social and cultural diversity.

The comparative study also seeks to identify guiding principles that enable the State to uphold constitutional supremacy while respecting legitimate religious autonomy, thereby ensuring that governance remains founded upon constitutional values rather than religious preferences.

The United States follows a constitutional model based on the principle of institutional separation between Church and State. The Establishment Clause, which forbids the State from creating or supporting any religion, and the Free Exercise Clause, which safeguards each person's right to practice their religion freely, are two complementary rights found in the First Amendment. Together, these provisions ensure that governmental authority neither promotes nor suppresses religion, thereby safeguarding individual liberty of conscience.

Although often described as a model of negative secularism, the American approach is not hostile to religion; rather, it seeks to preserve religious liberty by limiting governmental involvement in religious affairs while permitting regulation only where

compelling public interests are involved. Religion is generally regarded as a private matter, and courts have consistently maintained constitutional neutrality in religious affairs. The U.S. Supreme Court ruled in *Engel v. Vitale* (1962)⁴⁸ that the Establishment Clause prohibited the recitation of even a non-denominational prayer written by public authority in public schools. Similar to this, required Bible reading and recitation of the Lord's Prayer in public schools were ruled to be unlawful in *Abington School District v. Schempp* (1963)⁴⁹, which reaffirmed the constitutional division of church and state. This model differs significantly from the Indian approach.

While the United States emphasises institutional separation and minimal State intervention, India follows a model of positive secularism, permitting limited State intervention to promote social reform, equality, and public welfare. Articles 25 to 30 protect both individual religious freedom and the collective rights of religious denominations and minorities, enabling judicial review of religious practices through doctrines such as Essential Religious Practices and constitutional morality. The American experience nevertheless offers an important lesson for India by emphasising judicial restraint in theological matters and institutional neutrality. However, given India's unique religious diversity and constitutional commitment to protecting minority rights, a strict separationist model may not be entirely suitable. Consequently, both constitutional systems seek to protect religious freedom, but they pursue this objective through different conceptions of secularism shaped by their distinct historical and social contexts.

Another well-known democratic style of secularism is found in France, where the constitutional principle of *laïcité*, which is based on the idea of a tight separation between religion and the state, is one of the strictest versions of secularism. The Law on the Separation of Churches and the State, 1905, which forbids the State from acknowledging or financially supporting any religion, formalized the philosophy that sprang from the French Revolution. The 1958 French Constitution's Article 1, which proclaims France to be a secular republic, further reflects this idea.⁵⁰

⁴⁸ *Engel v. Vitale*, 370 U.S. 421 (1962)

⁴⁹ *Abington School District v. Schempp*, 374 U.S. 203 (1963)

⁵⁰ T. Jeremy Gunn, *Religion and Law in France: Secularism, Separation, and State Intervention*, 57 Drake L. Rev. 949 (2009).

Unlike the Indian model, French secularism requires religion to remain largely within the private sphere and places significant restrictions on religious expression in public institutions. As a result, laws like the 2004 ban on obvious religious symbols in public schools, the 2010 ban on full-face coverings in public spaces, and the 2023 ban on wearing abayas in public schools have been justified on the grounds of maintaining state neutrality and guaranteeing equality among citizens. Critics, however, argue that the practical operation of *laïcité* has disproportionately affected religious minorities, particularly Muslims, by compelling individuals to choose between public participation and the visible manifestation of their faith.

Such measures have also been criticised for promoting cultural assimilation rather than accommodating religious diversity. The Indian Constitution, on the other hand, embraces a paradigm of positive secularism in which the state upholds its neutrality while allowing limited involvement in religious matters in order to advance equality, social change, and public welfare. The State is able to strike a balance between religious freedom and constitutional values thanks to Articles 25 to 30, which safeguard both individual and group religious liberties. While the French model highlights the importance of institutional neutrality and a religion-free public sphere, the Indian approach recognises that in a deeply pluralistic society, complete separation between religion and the State may neither be practical nor constitutionally desirable. India's experience therefore demonstrates that secularism can coexist with religious diversity through equal respect for all faiths rather than strict exclusion of religion from public life.

Japan presents another democratic model of secularism that differs from both the American and French approaches. Following the experience of State Shinto before the Second World War, the Constitution of Japan, 1947, under Articles 20 and 89, guarantees freedom of religion, prohibits the State from granting privileges to religious organisations, and restricts the use of public funds for religious purposes.⁵¹ Unlike France, however, Japanese secularism does not completely exclude religion from public life. In the *Tsu City Groundbreaking Case*, the Japanese Supreme Court

⁵¹ Frank S. Ravitch, *Secularism and Liberal Constitutionalism: Lessons from Japan*, 2017 Mich. St. L. Rev. 149.

adopted the "purpose and effects" test, holding that State action violates constitutional secularism only when its purpose or effect is to promote a particular religion.

This pragmatic approach recognises that complete separation between religion and the State is neither practical nor always desirable. In contrast, India follows a more interventionist model of positive secularism by permitting limited State regulation of religious practices to promote social reform, equality, and the protection of minority rights under Articles 25 to 30 of the Constitution. Nevertheless, Japan offers an important lesson for India by demonstrating that constitutional neutrality, judicial restraint in theological matters, and respect for cultural traditions can coexist while preserving religious freedom.

A comparative analysis of the United States, France, and Japan demonstrates that secularism assumes different forms depending on each country's historical and social context. The United States emphasises institutional separation between religion and the State, France adopts a stricter model of *laïcité* that limits religious expression in the public sphere, while Japan follows a pragmatic approach that permits limited interaction with religion without compromising constitutional neutrality. India, however, adopts a distinctive model of positive secularism that balances religious freedom with limited State intervention for social reform, equality, and protection of minority rights.

Given India's religious and cultural diversity, this accommodative approach is better suited to preserving social harmony than a model of strict separation. At the same time, India can draw valuable lessons from these democracies by ensuring greater institutional neutrality, judicial restraint in theological matters, and equal treatment of all religions. Ultimately, the success of Indian secularism depends upon maintaining a constitutional balance that protects religious liberty while promoting fraternity, peace, and brotherhood in furtherance of the constitutional vision reflected in the Directive Principles of State Policy.

X. IS THE UNIFORM CIVIL CODE A SOLUTION TO THE TUSSLE BETWEEN FREEDOM OF RELIGION AND SECULARISM? A CONSTITUTIONAL ANALYSIS

India's constitutional framework is founded upon the twin ideals of religious freedom and secularism. Every person and religious denomination is guaranteed the freedom to profess, practice, and manage religious affairs under Articles 25 and 26, but these rights are not unqualified and remain subject to public order, morality, health, and the State's authority to implement social welfare and reform under Article 25(2). Concurrently, the Directive Principles of State Policy's Article 44 instructs the State to work toward obtaining a Uniform Civil Code (UCC) for every person. The constitutional challenge, therefore, is not whether freedom of religion should prevail over secularism or vice versa, but how these constitutional values can be harmoniously balanced while preserving India's pluralistic identity.

Without interfering with the fundamental principles of any religion, the Uniform Civil Code aims to create a single framework governing secular civil concerns like marriage, divorce, maintenance, adoption, guardianship, and succession. Recognizing that India's vast religious and cultural diversity necessitated a gradual and consultative approach rather than immediate legal uniformity, the framers of the Constitution purposefully included Article 44 among the Directive Principles. While defending Article 44 in the Constituent Assembly, Dr. B. R. Ambedkar noted that the government should continue to have the right to regulate secular topics in the greater public interest and that religion should not have complete control over all facets of civil life.

The constitutional justification for a Uniform Civil Code primarily rests upon the principles of equality, gender justice and constitutional morality. Several personal laws continue to contain discriminatory provisions, particularly against women in matters relating to inheritance, maintenance, guardianship and marriage. Such inequalities often conflict with the guarantees of equality under Articles 14 and 15, the right to life and dignity under Article 21, and the constitutional vision of fraternity embodied in the Preamble. The objective of the UCC is therefore not to abolish

religious identity but to remove discrimination from secular aspects of personal laws while ensuring equal civil rights for every citizen irrespective of religion.⁵²

This constitutional balance has always been acknowledged by the Hon'ble Supreme Court. In the *Shah Bano Begum case*, the Court emphasized the need for a Uniform Civil Code and concluded that maintenance under Section 125 of the Code of Criminal Procedure was a social justice measure that went beyond religious personal rules. Similar to this, the Court noted in *Sarla Mudgal v. Union of India* (1995)⁵³ that converting to a different religion in order to get married again violated both the rule of law and constitutional morality, underscoring the necessity of a uniform civil framework. In *John Vallamattom & Anr. v. Union of India* (2003)⁵⁴, the Court once again emphasized Article 44 as a crucial constitutional goal in overturning discriminatory clauses that affected Christians. Similarly, the Supreme Court interpreted personal laws in accordance with constitutional guarantees of equality and dignity in *Daniel Latifi & Anr. v. Union of India* (2001)⁵⁵ and *Shayara Bano v. Union of India* (2017)⁵⁶, reiterating that practices that violate fundamental rights cannot claim complete protection just because they have religious roots.

At the same time, the constitutional debate surrounding the UCC cannot ignore India's unique multicultural character. Unlike many homogeneous nations, India accommodates diverse religious communities, tribal customs and regional traditions. The special constitutional protections under the Sixth Schedule and Articles 371A to 371G preserve the customary practices of several North-Eastern States. Any attempt to impose an immediate and rigid Uniform Civil Code without meaningful consultation may undermine constitutional pluralism and generate unnecessary social tensions. Therefore, constitutional secularism requires balancing legal uniformity with legitimate cultural diversity rather than pursuing complete homogenisation.

⁵² Sohan Santosh Melligeri, Yogesh Chitturi, Tarun Gowda D, *The UCC's Impact on the Conflict Between Personal Laws and Fundamental Rights under the Constitution*, 7 Indian Journal of Law and Legal Research, 1163-1166

⁵³ Smt. Sarla Mudgal, President, Kalyani & Ors. vs. Union of India & Ors., 1995 SSC (3) 635

⁵⁴ John Vallamattom & Anr. vs Union of India, 2003 (6) SCC 611

⁵⁵ Daniel Latifi & Anr. vs. Union of India AIR 2001 SUPREME COURT 3958

⁵⁶ Shayara Bano vs. Union of India and Others, AIR 2017 SUPREME COURT 4609

The recommendations of the Law Commission also support this balanced approach. Instead of advocating immediate uniformity, the Commission favoured progressive reforms within personal laws, compulsory registration of marriages, gender-neutral inheritance rights, elimination of discriminatory practices and gradual harmonisation of civil laws through broad public consultation. Such an approach aligns more closely with India's model of positive secularism, where the State neither identifies with nor opposes any religion but intervenes only to secure constitutional values of equality, dignity and social justice.

Recent developments further demonstrate that constitutional evolution is already moving towards greater uniformity in civil matters. Legislative reforms such as the abolition of instant triple talaq, equal coparcenary rights for daughters under the Hindu Succession (Amendment) Act, and the implementation of the Uniform Civil Code in Uttarakhand indicate that gradual legal reform remains consistent with both constitutional morality and democratic consensus.

In the author's considered view, the Uniform Civil Code has the potential to become an effective constitutional mechanism for balancing freedom of religion with secularism, provided it is implemented in a gradual, inclusive and rights-oriented manner. The true objective of the UCC should not be the eradication of religious diversity or the imposition of majoritarian values, but the elimination of discrimination embedded within personal laws.

Religion undoubtedly deserves constitutional protection; however, customs rooted in patriarchy, inequality or historical prejudice cannot claim immunity merely because they are practised in the name of religion. As Dr. B. R. Ambedkar rightly observed, "I like the religion that teaches liberty, equality and fraternity," while also cautioning that "A religion which allows one to treat another as inferior is not a religion but a disease." His vision reflects the constitutional philosophy that religion must coexist with equality rather than override it.

Accordingly, the constitutional solution does not lie in choosing between religious freedom and secularism but in harmonising Articles 25, 26 and 44 through a Uniform Civil Code that respects genuine religious beliefs while ensuring equal civil rights, gender justice and constitutional fraternity for all citizens. Such an approach would

uphold India's distinctive model of positive secularism, strengthen national integration and fulfil the constitutional aspiration of building a society founded upon justice, liberty, equality and fraternity.

XI. CONCLUSION AND SUGGESTIONS

Articles 25 to 28 of the Indian Constitution provide everyone the freedom of conscience and the right to declare, practice, and spread their religion, subject to certain constitutional restrictions. The Forty-Second Constitutional Amendment Act, 1976 added the word "Secular" to the Preamble in order to reaffirm the constitutional commitment to treating all religions equally. Secularism, however, has always been a fundamental aspect of the Constitution. The Indian approach of secularism guarantees that the State does not affiliate with any specific religion while upholding equality among all faiths, rather than creating a rigid division between the State and religion. In a society with a wide range of religious beliefs, this constitutional ideology fosters integrity, harmony, and fraternity. The judiciary has been crucial in maintaining this equilibrium by making sure that, although true religious freedom is maintained, actions that have an impact on public order, morality, health, and constitutional principles are scrutinized by the courts. The Supreme Court created the Essential Religious Practices (ERP) Doctrine in order to make a distinction between secular religious activities and essential religious practices.

Post-independence India has witnessed several constitutional disputes arising from the interaction between religious freedom and secular governance. Through landmark decisions such as *Shirur Mutt*, *Indian Young Lawyers Association (Sabarimala)* and *Shayara Bano*, the Supreme Court has attempted to strike a balance between religious autonomy and constitutional principles. While protecting essential religious practices, the Court has also intervened where customs and practices violated equality, dignity, gender justice or other fundamental rights. Over time, judicial jurisprudence has evolved from protecting institutional religious autonomy to adopting a rights-oriented approach based upon constitutional morality, substantive equality and social reform. These developments demonstrate that no single constitutional formula can resolve every conflict between religion and secularism; instead, each case requires careful balancing of competing constitutional values.

The Constituent Assembly, Parliament and the judiciary have each contributed to maintaining this constitutional equilibrium. While religious institutions often argue that State intervention infringes upon the freedom guaranteed under Articles 25 and 26, proponents of secularism emphasise that constitutional governance must also uphold equality, liberty and democratic values. As a result, the Indian Constitution harmonizes religious freedom with other constitutional guarantees, such as Articles 14, 19, and 21, the Directive Principles of State Policy, especially Article 38, and the Fundamental Duty under Article 51A(e), which mandates that all citizens uphold women's dignity, harmony, and fraternity.

When taken as a whole, these constitutional clauses reaffirm that religious freedom cannot be used in a way that is incompatible with the larger fundamental goals of social welfare, equality, and justice.

In the researcher's view, the Indian Constitution provides a strong constitutional framework for managing religious diversity while preserving national unity and integrity. While secularism guarantees that constitutional values prevail whenever discriminatory norms or practices damage equality, fraternity, dignity, or social peace, religious freedom allows every individual to proclaim, practice, and promote a religion of choice without being coerced. The comparative study of the United States, France and Japan demonstrates that India's model of positive secularism is uniquely suited to its pluralistic society.

Unlike the strict separation adopted in the United States and France, India permits limited State intervention to promote social reform and protect vulnerable groups. Nevertheless, challenges continue to arise due to political polarisation and the use of religion as an electoral tool, which often weakens public confidence in constitutional secularism.

Therefore, strengthening Indian secularism requires not only judicial vigilance but also institutional accountability. Constitutional authorities, including the Election Commission of India, should strictly enforce electoral laws and the Model Code of Conduct against appeals made on religious grounds, while courts should continue to ensure that constitutional principles remain paramount over partisan interests.

Public authorities must also act promptly against attempts to misuse religious symbols or sentiments for political gain whenever such conduct threatens constitutional values, public order or communal harmony. At the same time, reforms such as the Uniform Civil Code, if pursued, should be gradual, consultative and consistent with constitutional guarantees of equality, religious freedom and India's multicultural character.

The future of Indian secularism remains promising, provided constitutional institutions continue to faithfully uphold the values enshrined in the Constitution. The continued development of judicial doctrines, constitutional interpretation and democratic institutions will remain essential in ensuring that freedom of religion and secularism are not viewed as competing ideals but as complementary constitutional principles working together to preserve justice, equality, fraternity and the unity of the nation.

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