



ISSN:3049-2017

IJMH 2024; 1(2): 42-46

© 2024 IJMH

www.themultijournal.com

Received: 15-06-2024

Accepted: 28-06-2024

Publish : 29-06-2024

Biswanath Sarkar

Assistant Professor,
Dept. of Political Science,
Khalisani Mahavidyalaya,
Chandannagar, Hooghly,
West Bengal.

Muslim Personal Law and Secularism in India: A Review of the Supreme Court's Position

Biswanath Sarkar**Abstract**

India is a multi-religious, multicultural, and pluralistic society in which secularism is understood not merely as the separation of the State and religion, but as a distinctive constitutional principle founded upon equal respect for all religions, peaceful coexistence, and constitutional justice. This article examines the theoretical foundations and constitutional character of Indian secularism, with particular emphasis on the debates surrounding Muslim Personal Law and the Uniform Civil Code (UCC). It further analyses a series of landmark judgments of the Supreme Court of India, including *Mohd. Ahmed Khan v. Shah Bano Begum*, *Sarla Mudgal v. Union of India*, *Danial Latifi v. Union of India*, and *Shayara Bano v. Union of India*, to demonstrate that the Court has consistently accorded greater importance to constitutionally guaranteed fundamental rights, gender equality, social justice, and secular citizenship than to religious personal laws. The article argues that the Supreme Court's judicial approach has strengthened the secular character of the Indian Constitution while simultaneously redefining the discourse on the Uniform Civil Code by prioritising equality, social justice, and the protection of individual constitutional rights.

Keywords: - Muslim Personal Law, Secularism, Legal Pluralism, Supreme Court and Uniform Civil Code

Introduction

Among the unresolved controversies in India's social and political landscape, the conflict between the Uniform Civil Code (UCC) and the personal laws of different religious communities remains one of the most significant. Although the framers of the Indian Constitution envisioned the establishment of a common civil code for all citizens, they were unable to achieve legal uniformity at the time of constitution-making. Nevertheless, this aspiration was reflected in Article 44 of the Directive Principles of State Policy, which directs the State to endeavour to secure a Uniform Civil Code for all citizens. Despite extensive political debate and public discourse, Article 44 has remained unimplemented to this day. India continues to maintain separate personal laws for different religious communities. Among these, Muslim Personal Law has repeatedly become the focal point of criticism and controversy, not only among proponents of secularism and Muslim reformists but also among right-wing political groups. However, Muslim Personal Law is not entirely immutable; it is capable of reform in response to changing social realities. A notable example is the Special Marriage Act, 1954, which enables Muslims and non-Muslims to marry without either party having to convert to the other's religion (Vatuk 49). The existence of distinct personal laws for Muslims and other religious communities reflects the legal pluralism that characterises the Indian legal system. Many scholars positively acknowledge this diversity and regard it as a safeguard for the religious rights of minority communities. At the same time, while religious communities enjoy constitutionally guaranteed rights, it is equally important to recognise that the Constitution confers fundamental rights upon individuals as citizens (Vatuk 54). In situations where the rights of religious communities come into conflict with the constitutional rights of individual citizens, the rights of the

Correspondence:**Biswanath Sarkar**

Assistant Professor,
Dept. of Political Science,
Khalisani Mahavidyalaya,
Chandannagar, Hooghly,
West Bengal.

individual take precedence. Consequently, from the perspective of secular citizenship, issues relating to social injustice, gender equality, and the rights of Muslim women have brought Muslim Personal Law to the centre of constitutional and legal debate. It is within this context that the Supreme Court of India has articulated its constitutional position through a series of landmark judgments aimed at resolving these contentious issues.

The Concept of Secularism in India: Theoretical Domain, the Constitution, and the Supreme Court

Although the theoretical concept of secularism first emerged in the West, it gradually spread across different parts of the world with the rise of the modern nation-state and assumed distinct forms in diverse social, cultural, and historical contexts. In the West, the Enlightenment marked the beginning of rational inquiry based on worldly realities, free from the dominance of the Church, in fields such as politics, science, history, philosophy, and the arts. This process of intellectual emancipation-initiated secularisation in both the State and society. Consequently, following the prolonged conflict between the Church and the State during the late medieval period, secularism came to be established as one of the fundamental principles of the modern liberal State (Casanova 54).

The concept of secularism was introduced into India through Western intellectual traditions; however, it evolved in accordance with India's own social, cultural, and historical circumstances. As a result, Indian secularism differs significantly from the more rigid conception of secularism prevalent in the West and has developed a distinctive normative framework of its own. Explaining the political meaning of secularism in the Indian context, Amartya Sen argues that the State rejects any inclination towards favouring a particular religious community and instead emphasises impartiality towards all religions. Since the Indian State governs a society composed of multiple religious communities, its conduct is expected to maintain a fundamental balance among them, a characteristic that constitutes the essence of Indian secularism (Sen 296). One of the foremost theorists of Indian secularism, Rajeev Bhargava, contends that Indian secularism departs from the doctrine of a rigid separation between the State and religion. While he acknowledges that, in its broader sense, secularism implies the separation of religion and politics, he argues that Indian secularism does not seek to "erect a strict wall of separation" between the two. Instead, Bhargava conceptualises Indian secularism through the principle of principled distance, according to which religion and politics remain institutionally distinct while continuing to maintain certain legitimate forms of interaction. The relationship between the two, therefore, is characterised by an appropriate constitutional distance that enables the State to engage with religion whenever necessary to uphold equality, justice, and individual rights (Bhargava 486–512). Thus, although Indian secularism recognises the institutional separation of religion and politics, it rejects the notion of their absolute isolation. Rather than advocating complete disengagement, it envisages a constitutional relationship in

which the State maintains a principled and balanced distance from all religions while ensuring equal respect, social justice, and democratic governance.

The original Constitution of India refers to the term "secular" only once, in Article 25(2)(a), where it is invoked to qualify and limit the otherwise extensive guarantee of religious freedom by empowering the State to regulate or restrict secular activities associated with religious practice (Bakshi 95). Subsequently, the Forty-second Constitutional Amendment Act, 1976, incorporated the term "Secular" into the Preamble, explicitly affirming the secular character of the Indian State. Furthermore, the secular ethos of the Constitution is reflected in the provisions relating to Fundamental Rights, which guarantee equality and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. In addition, Article 325 reinforces the Constitution's secular commitment by ensuring equal electoral rights for all citizens, irrespective of religion, caste, or race, in elections to both the Union and State legislatures. Collectively, these constitutional provisions embody and reinforce the secular character of the Indian Constitution.

As the guardian and ultimate interpreter of the Constitution of India, the Supreme Court has, through a series of landmark judgments, consistently clarified its position on constitutional secularism. In *Kesavananda Bharati v. State of Kerala* (1973) and *S. R. Bommai v. Union of India* (1994), the Supreme Court unequivocally recognised secularism as an integral component of the Basic Structure of the Indian Constitution. The Court further held that every element of the Basic Structure, including secularism, is inviolable and beyond the amending power of Parliament. Consequently, since the secular character of the Constitution constitutes one of its essential structural features, every law or ordinance enacted by the Indian Parliament must conform to this constitutional principle. Any legislative measure found to be inconsistent with the secular character of the Constitution is liable to be subjected to judicial review and may be declared unconstitutional by the Supreme Court.

On the other hand, while defining the nature of secularism, the Supreme Court in *Ahmedabad St. Xavier's College Society v. State of Gujarat* (AIR 1974 SC 1389) characterised secularism, in the constitutional context, as "an attitude of life" that facilitates the harmonious development of citizens and society. In *S. R. Bommai v. Union of India* (AIR 1994 SC 244), the Court further elaborated the distinctive character of Indian secularism, holding that equal treatment of all religious communities by the State, the promotion of religious tolerance, and the protection of the life, property, and places of worship of all religious groups constitute indispensable elements of the constitutional principle of secularism. The Court further observed that Indian secularism is not opposed to religion; rather, it is founded upon the principles of peaceful coexistence, equal respect for all religions, and the preservation of India's pluralistic cultural traditions. It is also sustained by a limited institutional separation between the State and religion. The Supreme Court neither endorsed the Western doctrine of a strict wall of separation between

religion and the State nor accepted an approach that permits unrestricted interaction between the two. Instead, it recognised religious tolerance as the normative foundation of Indian secularism. This principle of tolerance is realised at the constitutional level through the State's commitment to treating all religious communities with equal respect and ensuring equality before the law irrespective of religion, thereby giving substantive expression to the Indian model of secularism.

Muslim Personal Law in the Context of Legal Pluralism and the Uniform Civil Code in India

India's legal system is characterised by considerable diversity. While a substantial degree of legal uniformity has been achieved in the sphere of criminal law, the domain of civil law continues to reflect a pluralistic legal framework. This legal pluralism is primarily manifested through the existence of distinct personal laws governing different religious communities, including Hindus, Muslims, Parsis, and others. These separate civil codes have been retained to preserve the unique customs, traditions, and socio-religious practices of each community within the broader legal system. Although the existence of different personal laws for various religious communities embodies the principle of legal pluralism in India, it has also generated significant constitutional and political debate (Newbiggin 84). Article 44 of the Constitution directs the State to endeavour to secure a Uniform Civil Code (UCC) for all citizens. However, despite this constitutional directive, the provision has remained an aspirational principle rather than an enforceable legal mandate. The personal laws of different religious communities regulate matters such as wills and inheritance of property, adoption, marriage and divorce, as well as rights and obligations relating to maintenance and compensation, in accordance with their respective customs and religious traditions. Nevertheless, these personal laws have increasingly become the subject of controversy, particularly with regard to the principles of gender equality, social justice, and substantive constitutional morality. Critics argue that certain provisions of personal laws are inconsistent with the constitutional commitment to equality before the law and equal rights for men and women, thereby raising important questions concerning the reconciliation of legal pluralism with the constitutional ideals of justice and equality.

Islam and Islamic jurisprudence constitute the principal sources of Muslim Personal Law in India. The legal foundations of Muslim Personal Law are derived from the reforms introduced by the Prophet Muhammad during his residence in Medina, as embodied in the *Quran*, which contains the fundamental religious and legal injunctions of Islam. Another primary source is the *Hadith*, comprising the recorded sayings, actions, and practices of the Prophet as preserved by his companions. In addition, the principles formulated through *Ijma* (consensus) by Islamic jurists constitute an important source of Islamic law and, consequently, of Muslim Personal Law as practised in India (Patel 45). During British colonial rule, the Muslim Personal Law (Shariat) Application Act, 1937, was enacted against

the backdrop of the constitutional reforms initiated under the Government of India Act, 1935. The colonial administration introduced this legislation not merely as an instrument of religious regulation but as a framework governing the social affairs of the Muslim community (Ansari 88). Nevertheless, the interpretation and application of Muslim Personal Law have repeatedly generated public and constitutional controversies in India. Certain provisions of the existing Muslim Personal Law have been criticised for being incompatible with the constitutional principles of gender equality, social justice, and equal protection of the law. Consequently, conflicts have frequently arisen between these personal laws and the secular constitutional framework of India. As the guardian of constitutional values, the Supreme Court of India has, on numerous occasions, adopted a secular constitutional approach while adjudicating disputes involving Muslim Personal Law. In doing so, the Court has reignited the debate over the relationship between religious personal laws and the necessity of introducing a Uniform Civil Code (UCC), particularly from the standpoint of constitutional secularism, individual rights, and substantive equality.

The Supreme Court and Muslim Personal Law: Uniform Civil Code or Legal Pluralism?

Since the adoption of the Constitution, India has not implemented a Uniform Civil Code (UCC). Alongside the State's secular legal framework, distinct personal laws governing religious and family matters continue to operate for different religious communities, and these laws retain considerable social and legal significance in Indian public life. However, in certain respects, these personal laws are inconsistent with the secular constitutional values enshrined in the Constitution. In particular, some provisions of personal laws have been criticised for adopting positions that are incompatible with the constitutional principles of equality, social justice, and individual liberty.

In contrast, constitutional secularism, which is founded upon the principle of equal treatment of all citizens irrespective of religion, has guided the Supreme Court's judicial approach in several landmark cases. While adjudicating disputes concerning Muslim Personal Law, the Court has, on numerous occasions, accorded greater priority to the ideals of secular citizenship, constitutional morality, and fundamental rights than to the claims of religious personal laws. This judicial approach reflects the Supreme Court's firm commitment to safeguarding constitutional values and demonstrates its willingness to subject personal laws to constitutional scrutiny whenever they conflict with the principles of equality, justice, and individual rights. Consequently, the Court's jurisprudence has significantly shaped the ongoing debate between the preservation of legal pluralism and the constitutional aspiration for a Uniform Civil Code in India.

In *State of Bombay v. Narasu Appa Mali* (AIR 1952 Bom 84), the Bombay High Court held that personal laws could not be brought within the scope of State law and that, even if such laws were inconsistent with the Fundamental Rights guaranteed under the Constitution, they would remain

outside the purview of constitutional scrutiny. This judgment effectively treated personal laws as being beyond the jurisdiction of the Constitution with respect to judicial review. However, the Supreme Court of India subsequently departed from this controversial position in *Bai Tahira v. Ali Hussain Fissalli Chothia* (AIR 1979 SC 362) and *Fuzlunbi v. K. Khader Vali* (AIR 1980 SC 1730). In both cases, the Court adjudicated the disputes not on the basis of Muslim Personal Law but under Section 125 of the Code of Criminal Procedure (CrPC). The Supreme Court held that the provisions of Muslim Personal Law could not operate as a bar to the right of a divorced Muslim woman to claim maintenance. The Court further ruled that a divorced woman who was unable to maintain herself was entitled to receive maintenance of up to ₹500 per month under the then prevailing statutory limit. It also affirmed that, in the event of the husband's refusal to comply with a maintenance order, he could be subjected to legal enforcement, including imprisonment, upon the complaint of the aggrieved woman. These judgments marked an important shift in the Court's jurisprudence by affirming that statutory protections guaranteeing maintenance to divorced women would prevail over conflicting provisions of personal law, thereby reinforcing the constitutional commitment to social justice and gender equality.

Another landmark decision of the Supreme Court of India concerning the issue of maintenance was *Mohd. Ahmed Khan v. Shah Bano Begum* (AIR 1985 SC 945). In this case, Shah Bano Begum, a sixty-five-year-old Muslim woman, was divorced by her husband through the practice of triple talaq (instantaneous unilateral divorce). Seeking financial support, she initially filed a petition before the Judicial Magistrate at Indore, who directed her husband to pay a monthly maintenance of ₹25. Dissatisfied with the inadequacy of this amount, Shah Bano subsequently appealed to the Madhya Pradesh High Court, which, invoking Section 125 of the Code of Criminal Procedure (CrPC), enhanced the maintenance to ₹179.20 per month. Aggrieved by the High Court's decision, Mohd. Ahmed Khan appealed before the Supreme Court. The Supreme Court upheld the judgment of the Madhya Pradesh High Court and reaffirmed the applicability of Section 125 of the CrPC to the case. In addition, the Court emphasised the constitutional significance of Article 44 and underscored the desirability of introducing a Uniform Civil Code (UCC) to promote legal uniformity and national integration. The Court further directed the husband to pay ₹10,000 towards Shah Bano's litigation expenses. In its judgment, the Supreme Court unequivocally held that the applicability of Section 125 of the Code of Criminal Procedure is independent of an individual's religious affiliation. Whether a person is Hindu, Muslim, Christian, or Parsi is immaterial for the purpose of claiming maintenance under the provision. By affirming the secular and welfare-oriented character of Section 125, the Court established that the statutory right to maintenance takes precedence over conflicting provisions of religious personal law, thereby

reinforcing the constitutional principles of equality, social justice, and secular citizenship.

Following the Shah Bano judgment, the primacy of a Uniform Civil Code (UCC) over religious personal laws was once again emphasised by the Supreme Court in *Sarla Mudgal, President, Kalyani and Others v. Union of India* (AIR 1995 SC 1531). In this landmark decision, the Court urged the Central Government to fulfil its constitutional obligation under Article 44 by taking effective steps towards the implementation of a Uniform Civil Code. The Court observed that the continued existence of divergent personal laws governing different religious communities posed significant challenges to the constitutional ideals of equality, national integration, and secular governance. Subsequently, in *Danial Latifi v. Union of India* (AIR 2001 SC 3958), the Supreme Court examined the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which had been widely criticised for restricting the maintenance rights of divorced Muslim women. Rather than invalidating the Act, the Court adopted a purposive and constitutionally harmonious interpretation, holding that a Muslim husband is under an obligation to make a fair and reasonable provision for his divorced wife within the *iddat* period, and that such provision must be sufficient to maintain her beyond the expiry of the *iddat* period. By interpreting the Act in conformity with the constitutional principles of equality and social justice, the Court preserved its validity while substantially expanding the protection available to divorced Muslim women. The judgment also reiterated the importance of progressive legal reform and reaffirmed that the implementation of a Uniform Civil Code would further the constitutional objectives of national integration, equality, and secularism.

More recently, the Supreme Court reaffirmed its constitutional position on Muslim Personal Law in *Shayara Bano and Others v. Union of India and Others* (AIR 2017 SC 4609). In this case, the petitioners challenged the constitutional validity of the practice of *talaq-e-biddat* (instant triple talaq), under which they had been unilaterally divorced by their husbands through modern modes of communication such as speed post, WhatsApp messages, and telephone calls. While adjudicating the matter, the Supreme Court examined whether gender-based discrimination against women could be justified within the framework of contemporary constitutional morality and whether Muslim women, as citizens of a secular constitutional State, could be subjected to discrimination on the basis of religion. In its landmark judgment, the Supreme Court declared the practice of instant triple talaq (*talaq-e-biddat*) to be unconstitutional and legally invalid, holding that it violated the fundamental rights guaranteed under the Constitution. The Court approached the issue of divorce from the standpoint of secular constitutional law rather than exclusively through the lens of religious personal law. It observed that the practice of instant triple talaq was manifestly arbitrary and infringed Article 14 of the Constitution by denying Muslim women the equal protection of the law and equality before the law. The

judgment further revived the constitutional discourse on the desirability of implementing a Uniform Civil Code (UCC) as envisaged under Article 44 of the Constitution. From the outset, the Supreme Court has consistently accorded greater importance to constitutional and statutory law than to religious personal laws whenever the two have come into conflict. In landmark decisions such as *Shah Bano*, *Sarla Mudgal*, and *Shayara Bano*, the Court has repeatedly favoured the constitutional principles of equality, social justice, and secular citizenship over discriminatory provisions contained in personal laws. Through these judgments, the Court has consistently endorsed the objective of greater legal uniformity and has repeatedly urged the Government to take appropriate steps towards the enactment of a Uniform Civil Code that is compatible with the secular and egalitarian values embodied in the Constitution of India.

Conclusion

A close examination of the above-mentioned judgments of the Supreme Court of India reveals a discernible judicial preference for legal uniformity over legal pluralism in matters where religious personal laws conflict with constitutional values. The Court has consistently accorded greater weight to secular constitutional and statutory law than to religious personal laws while adjudicating such disputes. Its jurisprudence demonstrates that an individual's constitutionally guaranteed Fundamental Rights are inviolable and cannot be subordinated solely on the basis of religious affiliation. In these cases, the Court has placed greater emphasis on the individual's identity as a citizen of a secular constitutional State than on his or her membership of a particular religious community, thereby prioritising the constitutional ideals of equality, dignity, and social justice. In particular, the Supreme Court has consciously relied on Section 125 of the Code of Criminal Procedure (CrPC) rather than exclusively on the provisions of Muslim Personal Law while resolving disputes relating to the maintenance rights of divorced Muslim women. Through its decisions, the Court has consistently placed the constitutional principles of gender equality, equal protection of the law, and social justice above discriminatory provisions contained in personal laws. In doing so, it has reaffirmed its constitutional responsibility to preserve the foundational values of the Indian Constitution, especially the principle of secularism. Furthermore, the Court's jurisprudence has highlighted the constitutional significance of a Uniform Civil Code (UCC) as an instrument for eliminating discrimination and ensuring substantive equality for Muslim women within the framework of a secular constitutional order. Although the Supreme Court has, in several cases, held that Fundamental Rights prevail over the Directive Principles of State Policy where a conflict arises, it has simultaneously urged the State to fulfil the constitutional aspiration embodied in Article 44 by taking effective steps towards the implementation of a Uniform Civil Code. In this respect, the Court has treated Article 44 not as an enforceable mandate but as an important constitutional objective capable of advancing equality, legal certainty, and national integration. Overall, the Supreme

Court's consistent commitment to secular citizenship, constitutional morality, and gender justice has encouraged both the legislature and the executive to undertake meaningful legal reforms. Its judicial pronouncements have repeatedly indicated that the implementation of a constitutionally compliant Uniform Civil Code remains an important constitutional aspiration for strengthening equal citizenship, protecting individual rights, and deepening the secular and democratic character of the Indian constitutional order.

Reference :

1. AIR 1952 Bombay 1954. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
2. AIR 1974 SC 1389. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
3. AIR 1979 SC 362. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
4. AIR 1980 SC 1730. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
5. AIR 1985 SC 945. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
6. AIR 1994 SC 244. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
7. AIR 1995 SC 635. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
8. AIR 2001 SC 740. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
9. AIR 2017 SC 4609. Available at : <https://www.indiankanoon.org> [accessed Date 10/10/2020]
10. Ansari, Iqbal A. "Muslim Personal Law in India." Institute of Muslim Minority Affairs Journal. 1.2 (2007): 88.
11. Bakshi, P. M. The Constitution of India. Haryana: Lexis Nexis, 2018.
12. Bhargava, R. "What is Secularism For" Secularism and its Critics. Ed. R. Bhargava. New Delhi: OUP, 1998. 486-512.
13. Casanova, J. "The Secular, Secularization, Secularism" Rethinking Secularism. Ed. C. Calhoun M. Juergensmeyer & J. VanAntwerpen. New York: OUP, 2011. 54.
14. Newbigin, E. "The Codification of Personal Law and Secular Citizenship." Indian Economic and Social Review. 46.1 (2009): 84.
15. Patel, "Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice." Economic and Political Weekly. 44.44 (2005): 45.
16. Sen, A. The Argumentative Indian. New York: Penguin Books, 2005.
17. Vatuk, S. "The Application of Muslim Personal Law in India" Adjudicating Family Law in Muslim Courts. Ed. Elisa Giunchi. New York: Routledge, 2014. 49.
18. Vatuk, S. "The Application of Muslim Personal Law in India" Adjudicating Family Law in Muslim Courts. Ed. Elisa Giunchi. New York: Routledge, 2014. 54.