**UNIFORM CIVIL CODE: A SOLUTION TO RELIGION BASED GENDER DISCRIMINATION?[[1]](#footnote-2)**

Abstract

Patriarchal interpretations of religious belief have defined and shaped the social and cultural contexts of Indian women that has resulted into their disempowerment and somewhat second-class status. Passionate attempts of protection of multiculturalism through the provision of group rights, not only minorities’ rights what must not be ignored is the rights of women and consequently the goal of gender justice.

Recently, urban migration, female political participation, education and the activities of social reformers have all helped the public acceptance of new roles for women. As yet, only a tiny minority of women have benefited from the changes that have occurred. The religion based  disparity continues and extends, but is not limited, to menstruation, purity, women’s role in religious leadership, patriarchal interpretation of religious texts, and women’s entry into various religious places.

The paper attempts to examine the rhetoric of a Uniform Civil Code in India as a response to religion based gender discrimination given the presence of centripetal forces in India in light of feminist literature and judicial precedents tracing the impact of patriarchal interpretations on the lives of womenand an examination of presence of parallel justice dispensing mechanisms and their role in maintaining gender Justice.

*Keywords: Uniform Civil Code, Freedom of Religion, Article 25, Religion,Darul Qazi,Gender Justice*

**GENERAL INTRODUCTION**

Attitudes that have been developed around patriarchal interpretations of religious belief have defined and shaped the social and cultural contexts of Indian women that has resulted into their disempowerment and somewhat second-class status.

In India, religion is used as a tool to manipulate the masses, wherein the women have to bear the brunt of the consequences of cultural attitudes.

Almost all the religions started as movements presenting themselves as a way of life. Several of them have their origins in protest against established exclusionary and oppressive religious structures.

However, there prevailing the patriarchal structures, once religion took root as an institution with super rigid dogmas.“The language, symbols and culturally conditioned interpretation of religious scriptures have evolved a practice that alienates women and even influences exploitation and violence towards them”.[[2]](#footnote-3)

**UNIFORM CIVIL CODE: A SOLUTION TO RELIGION BASED GENDER DISCRIMINATION?**

**1. Introduction**

Thou art the woman and Thou the man; Thou art a boy and again a young virgin; Thou art yonder worn and aged man that walkest bent with thy staff. Lo, Thoubecomest born and the world is full of thy faces.

 (Shvetashvatara Upanishad)[[3]](#footnote-4)

*Kali* embodies the boundless and existential freedom to be, **without seeking permission**. *Kali* is the feminist icon we need today! it is embracing that the ultimate goal for which women continue to be at war is, simply, **to be**.

Almost all the religions started as movements presenting themselves as a way of life. In fact several of them have their origins in protest against established exclusionary and oppressive religious structures.

Although, there is no scholarly consensus over what precisely constitutes a religion,  an attempt to define it would involve certain keywords viz. "respect for what is sacred, reverence for the gods, sense of right, moral obligation, sanctity etc." In a layman’s terms, religion can be said to be a social construct, deviance from which is *believed to* invite undesirable consequences. Such beliefs could be fallacious interpretations as well as well knitted method of conditioning to suit one’s ideologies.

This paper discusses one such aspect of religion that tends to reduce women to the status of a somewhat ‘second-class citizens.

Recently, urban migration, female political participation, education, careers, and the activities of social reformers have all helped the public acceptance of new roles for women. As yet, only a tiny minority of women have benefited from the changes that have occurred.The religion based disparity continues and extends but is not limited to menstruation, purity, women’s role in religious leadership, patriarchal interpretation of religious texts, and women’s entry into various religious places.

The preamble of India declares India to be a secular state. The constitution of India guarantees equal rights to its citizens irrespective of race, gender, ethnicity, or language through its Constitution as opposed to states having some official religion of their own i.e. theocratic ones.

India gives recognition to the personal/customary laws of each community, thereby Article 25 guarantees 'the freedom of religion' and also protects the religious nature of family laws. Innumerable problems come up when personal laws violate constitutional law. “The Indian woman with several laws in her favour is still one of the most oppressed in Asia”[[4]](#footnote-5). Many women are challenging aspects of personal law in different communities amidst the controversy for a uniform civil code.

In 1993, India ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) The United Nations Commission on the Status of Women in 1979, drafted CEDAW is an international treaty promising to end discrimination faced by women in all walks of life round the globe.[[5]](#footnote-6)

Though the CEDAW has been meticulously drafted, it has neglected “Religion” completely.

In India, and several other parts of the world, religious values regulate a number of aspects of personal life, from marital relationships and children’s guardianship to inheritance of property and divorce.  And these aspects significantly affect women’s dignity and quality of life in plethora of aspects.

In balancing equality for all women, together with religious freedoms the legislature and judiciary often face the dilemma.

The recent uproar with respect to women’s’ entry in the Sabarimala Temple wherein the Supreme Court noted its primary agenda is to evolve a sense of “substantial and complete justice” in such matters, and therefore, the need for an overall judicial review of religious practices across the nation.[[6]](#footnote-7)

If Hindu women were now entering the Sabarimala temple, would Muslim and Parsi rules regarding the entry of women in their places of worship have to change too

An association of 40 women rights’ activists belonging to reputed institutions such as Jawaharlal Nehru University and other organizations called the bill “arbitrary and excessive.[[7]](#footnote-8)” The verdict was considered anti-women and anti-children. It was considered to be mistaken understanding of Islamic law especially because of a lack of consultation with Islamic religious scholars and leaders.

Religious communities have the ability to speak to a majority of the population in peculiar ways that a state cannot.[[8]](#footnote-9)

Amidst all these, balancing the fundamental rights of women together with balancing of rights to freedom of religion becomes a herculean task. The present paper dwells into this issue with an attempt to inquire into plausibility of introduction of Uniform Civil Code in India as a response to religion based Gender Discrimination in India.

The paper, in the end comes up with solutions for the problem of religion based Gender Discrimination in India.

**2. FREEDOM OF RELIGION UNDER THE CONSTITUTION: THE BARE TEXT**

The drafters of the Indian constitution created fundamental rights with a recognition of the need to protect group rights as well.

For instance, Article 29 protects the rights of groups to preserve their language, script, and culture and prohibits discrimination in access to public educational institutions based on religion, race, caste, or language.[[9]](#footnote-10)

Article 30 protects the right of religious and linguistic minority groups to establish educational institutions.[[10]](#footnote-11) Other articles of the Constitution that guarantee certain fundamental rights to all citizens also operate as safeguards for groups, such as equality before the law (Article 14), freedom from discrimination on the basis of religion, race, caste, sex or place of birth (Article 15), and equal opportunity in public employment (Article 16).[[11]](#footnote-12) Articles 29 and 30 bestow a positive right on groups to preserve their culture, whereas Articles 14 and 15 are enveloped somewhat individualistic terms, granting *negative rights* to individuals to protect them from any intervention on the part of the State.[[12]](#footnote-13)

“No rights as guaranteed in Part III of the Constitution is absolute. They are rather subject to reasonable restrictions and they are inter-dependent also, and therefore we need interpretations of these Articles in the given context,"

**3. THE APPROACH OF JUDICIARY TOWARDS WOMEN RIGHTS VIS-À-VIS FREEDOM OF RELIGION**

“While India’s jurisprudence has in some areas been quite progressive with regard to women’s rights, this has not been the case in the area of personal laws”.[[13]](#footnote-14)

The Indian judiciary, especially the Supreme Court, in the capacity of a defender of the Constitution, has “been a forerunner in protecting minorities and safeguarding the multicultural ethos of the polity”.[[14]](#footnote-15)

Though the Supreme Court has adjudicated a plethora of cases balancing the rights of minorities against somewhat more universal ‘civil rights’, the discussion herein is limited in scope to those instances that have affected the rights of women.

The question as to who has the power to interpret the personal laws of the various religious communities within India has baffled the Indian judiciary for quite a long time.

3.1 **ESSENTIALS OF RELIGION: THE SUPREME COURT OF INDIA**

The doctrine of “essentiality” was invented by a seven-judge Bench of the Supreme Court in the ‘Shirur Mutt[[15]](#footnote-16)’ case in 1954. The court held that the term “religion” will cover all rituals and practices that are “integral” to a religion, and took up the responsibility of determining the essential and non-essential practices of a religion.

Essential religious practice test is a doctrine which is evolved by the court to protect only such religious practices which were essential and integral to the religion.

In *Ratilal*v*. State of Bombay[[16]](#footnote-17),* the Supreme Court of India had ruled that “no outside authority had the right to proclaim the essential parts of a religion”.

We can say that The courts have the power to interpret the personal laws of India's religious communities. Courts had exercised this power in a number of cases eg. in *Abdul Jalil* v. *State of Uttar Pradesh[[17]](#footnote-18)* or in the case of *R.M.K Singh* v. State,[[18]](#footnote-19) or *Durgah Committee* v*. Hussain Ali[[19]](#footnote-20)* or *Mohammad Hanif Qureshi* v*. State of Bihar[[20]](#footnote-21), inter alia.*

3.2 **SUPREME COURT ON INTERSECTION OF WOMEN’S RIGHTS AND RELIGION**

In *Mohammed Ahmed Khan* v*. Shah Bano Begum[[21]](#footnote-22),* the hon’ble Supreme Courtwhich granted maintenance rights to a poor woman, which led the religious leaders create sufficient pressure on the Parliament to overrule the judgment and the doctrine.

Shah Bano, a Muslim woman whose husband had (unilaterally) divorced her and then refused to pay her maintenance beyond the period of *Iddat,* which is a mandatory three-month waiting period (under muslim personal law) after a divorce during which remarriage is prohibited. The petitioner (Shah Bano Begum) had sued her husband under the Criminal Procedure Code Section 125, which permits the wives to sue their husbands for maintenance.[[22]](#footnote-23)

Initially, i.e. prior to *Shah Bano judgement,* the Supreme Court had already ruled in two separate decisions that divorced Muslim women were entitled to maintenance even when they had received the customary one-time sum i.e. *Meher* or Dower due to them under Muslim Personal Law, provided that sum was not adequate for their maintenance. In *Bai*

*Tahira*v*. Ali Hussain FidaalliChothia[[23]](#footnote-24)*the apex Court held that Criminal Procedure Code Section 127[[24]](#footnote-25), (which provides that a woman is not entitled to maintenance if she receives sums under any customary or personal law payable to her on divorce), does not negate the social purpose underlying Section 125 and that "ill-used wives and desperate divorcees" could not be driven "to seek sanctuary on the streets."[[25]](#footnote-26) The Court further held that the purpose of payment "under any customary or personal law" is to provide the divorcee with maintenance and to keep her from becoming a destitute. The judgement of *Bai Tahira*proscribes a husband from hiding behind Section 127(3)(b) to shirk his Section 125 maintenance responsibilities.

In the case of*Fazlunbi*v*. Vali[[26]](#footnote-27)*the Supreme Court had held that "neither personal law nor other salvationary plea will hold against the policy of public law pervading S. 127 (3)(b) in as much as it does not hold against S.125. '' These decisions therefore, had sufficiently established that Muslim women have a right to continued maintenance under Section 125 if the customary amount paid at divorce is insufficient for their livelihood.

*Shah Bano,* judgement, crossed a few more miles and held that a Muslim man has an ‘obligation’ to pay maintenance to his ex-wife irrespective of the adequacy of the customary payment. It further held that in case where there is a situation of conflict between the criminal code and personal laws, the criminal code would prevail.

In the same judgement, it was held that “Section 125 is a part of the Code of Criminal Procedure, not of the civil laws which define and govern the rights and obligations of the parties belonging to particular religions .... Section 125 was enacted in order to provide a quick and summary remedy to a class of persons who are unable to maintain themselves”[[27]](#footnote-28).

The *Shah Bano*judgment caused agitation among Muslim religious communities. Hence, under political pressure from the leaders of the Muslim community,(which had resulted from the *Shah Bano*judgment) Parliament, passed the Muslim Women's (Protection of Rights on Divorce) Act in 1986 (Herein after called as the MWA).[[28]](#footnote-29)

The effect of the MWA was to reverse the right to continued maintenance for divorced Muslims pursuant to Section 125 of the Criminal Code.However, the Act did not take away the power of the courts to interpret the personal laws.The MWA provided for a one-time payment within the *iddat*period.[[29]](#footnote-30)

In opinion of feminist scholars Even in the situations when the judges of the Hon’ble Supreme Court decide in a manner that is in practise favourable for the women concerned, (eg. cases such as *Shah Bano[[30]](#footnote-31)* or *Danial Latifi[[31]](#footnote-32)* ), the courts usually do not base their decisions on ‘sex equality’[[32]](#footnote-33).

Indira Jaising[[33]](#footnote-34) argues that “the Indian courts” (Higher Courts I.e. the High Courts and the Supreme Court) have not had a detailed analysis with respect to the personal laws and have often circumvented the question of discrimination in family laws, either by declaring that the personal laws are not “laws” under the purview of Article 13, by drawing on the argument of a separation of powers and passing the ball into the court of the legislator, or by arguing that a specific discrimination was not based “*only* on the grounds of sex” as demanded by Article 15(1)”.[[34]](#footnote-35) Even in Moreover, there have been cases where even if the women claimants have got the decision in their favour, the Court has refused to test the specific personal law against the ‘Equality’.

Eg. In *Mary Roy*,[[35]](#footnote-36) the problematic provision in the ‘Travancore Christian Succession Act’ was struck down on a technical basis rather than it being device.[[36]](#footnote-37) In *Madhu Kishwar&Ors v State of Bihar[[37]](#footnote-38)* and in *Githa Hariharan*,[[38]](#footnote-39) the Court “read down” the discriminatory provisions, rather than declaring them unconstitutional i.e. interpreted the law so narrowly so as to ensure that it is constitutional or in consonance with superior laws.[[39]](#footnote-40) In a similar manner, there have been a large number of decisions of India Supreme Courts wherein there have been sexist and paternalistic remarks.[[40]](#footnote-41)

 A number of possible explanations could be there for the courts’ reluctance to come to terms with the constitutionality of the personal laws. One reason might be a concern that invalidating existing laws “would bring about a chaos in the existing state of law”.[[41]](#footnote-42) Additionally, sex equality might be regarded as a Western and hegemonic idea that does not respect cultural diversity.[[42]](#footnote-43) Lastly, across cultures the family is an area where “we encounter a pervasive and categorical reluctance to recognize sex equality rights”.[[43]](#footnote-44) Summing up, “In cases challenging sex inequality in personal laws, Indian courts appear paralyzed by the fear of being tarred by the brush of cultural insensitivity”.[[44]](#footnote-45)

Feminists criticize that even within this landmark judgement (ShayaraBano), the gender aspect fell rather short.[[45]](#footnote-46) Although Articles 14 and 15 were there in the judgement, the judgement did not deal with the intersectionality of gender and religious identity and the Court seemed less concerned with women’s rights, and more with the preservation of marriage, when it found fault with triple *talaq* on the ground that “the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it”.[[46]](#footnote-47)

*ShayaraBano* has a positive aspect when it produces attempts to critically evaluate those laws that discriminate against women or are based on patriarchal notions.

Very recently in August 2020 the Hon’ble Supreme Court in *Vineeta Sharma* v. *Rakesh Sharma*[[47]](#footnote-48), has held that that a daughter will have a share after Hindu Succession (Amendment) Act, 2005, irrespective of whether her father was alive or not at the time of the amendment on the question whether the Hindu Succession (Amendment) Act, 2005, which gave equal right to daughters in ancestral property, has a retrospective effect.

The Indian judiciary, especially the Supreme Court, in its role as the defender of the Constitution, has been the forerunner in protecting minorities and safeguarding the multicultural ethos of the polity. Though the Supreme Court has adjudicated a plethora of cases attempting to balance the rights of minorities against the civil rights, I will limit my discussion here to those cases that have impacted the rights of women within respective communities.

It can be concluded that Indian courts have proved a more hospitable forum for protecting and promoting women's rights, at least more than the religious institutions.

3.3 **THE LOWER JUDICIARY**

On one hand the feminist scholars criticize the Indian ‘higher’ judiciary for not exhibiting enough courage to interfere with the personal laws, on the other hand the criticism of the lower judiciary is on a different note.

As per the literature, it is both the procedural law as well as the poor functioning of the lower courts, particularly the family courts and the ‘patriarchal and paternalistic’ set of attitudes beliefs and behaviour that are present in the institutions and get easily reflected in the day-to-day working of these institutions.

The Family Courts established under the Family Courts Act of 1984[[48]](#footnote-49) with the objective of making the courts easily accessible making it easy for the litigants to be able to explain their contentions and problems to the judges “simple language”.[[49]](#footnote-50) “The courts turned out to instead preserve the institution of marriage at the expense of women than to provide for gender equality”, often infused with religion based patriarchal biases.[[50]](#footnote-51)

3.4 **THE NON-STATE JUSTICE SYSTEM**

The religious communities, especially the ‘male dominated religious clergies’ are the ones who are most responsible ones for opposing any change proposed to the status quo of their respective personal laws.[[51]](#footnote-52)

By letting the Religious leaders to continue exercising their authority over women of their community (by refusal to initiate any sort of reformation in the personal law), coupled with the state’s policy of reinforcing the split on the pretext that by claiming that no change is possible in the personal law unless the call for such change comes from the community itself, the state can be said to have abandoned women to patriarchal interpretations of their respective personal laws and has the effect of legitimizing it.[[52]](#footnote-53)

An example could be the *Shariat* courts or *darulqazas* (dispute resolution platform with their decisions based on Islamic law) which proclaim that “only obedient, moral, battered, and materially neglected women are deemed worthy of the *qazi*’s support” Moreover, their effectiveness is very shrinked the context of the society for “divorce leaves many women destitute and publicly shamed, the activists frequently encourage their litigants to seek reconciliation and give their marriage “one more chance”.[[53]](#footnote-54) Ironically they sincerely believe, (as do other devoted Muslims) that “their religion is exceptional and superior to other faiths to the degree that it accords women respect and care”.[[54]](#footnote-55)

Through a woman’s capability to “forum shop”, (i.e. to choose between a variety of state and substate dispute resolution mechanisms viz. courts, women’s organizations, social workers, panchayats, Nari Adalats, religious institutions etc.)[[55]](#footnote-56) i.e. providing many options to choose from, gender equality could be ensured in a better manner.[[56]](#footnote-57)

**4. UNIFORM CIVIL CODE IN INDIA: RESPONSE TO RELIGION BASED GENDER DISCRIMINATION?**

It is said that the recognition of personal laws under the guise of protecting minorities from a so-called dominant majority culture has facilitated institutionalization of patriarchal traditional practices that disadvantage Indian women.[[57]](#footnote-58)

There is a prevailing thought that the possibility of a uniform civil code that will ensure all the citizens, equal rights to freedom from oppression is there in Part IV of the Constitution, named the "Directive Principles of State Policy."

Article 44 establishes the goal of a uniform civil code, though its language, like the language of the other articles in Part IV, is only suggestive in the words: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.[[58]](#footnote-59)"

At present, India does not have a uniform civil code that would apply to every citizen irrespective of his or her religion or cultural identity.

The drafters had a hope that a ‘uniform’ civil code would ensure harmony between groups and strengthen the social fabric of the country which, if I can say so, is a group of several nations[[59]](#footnote-60).

**5. LITERATURE: FEMINIST PERSPECTIVE ON (SCHEMES SIMILAR TO) UCC**

A common man’s suggestion to such a problem would be “law reforms”. However, the term “law reform” is a wide one which is capable of plethora of interpretations.

The suggestions on what such a law reform should look like, there can be two extremes: one,

1. the Uniform Civil Code or UCC and
2. the small-scale, ‘community-led’ legal reforms.

Those arguing in favour of a UCC say the personal laws violate the equality provisions in Articles 14 and 15 of the Constitution.[[60]](#footnote-61) Arguments are also drawn in favour of the directive principle in Article 44, as “ Article 44 has, indeed, been used both to argue that the constitution makers intended to phase out personal law and introduce a UCC,”.[[61]](#footnote-62) and keep insisting on the point that “as long as India maintains different personal laws it cannot fulfil the preamble’s promise of secularism”.[[62]](#footnote-63)

There is a much talked about suggestion which provides for the “introduction of a uniform non-discriminatory law for all Indian women, which would also provide for adequate economic rights for them (maintenance, inheritance, an equal share of matrimonial property and economic independence for women after separation or divorce)”.[[63]](#footnote-64)

Noteworthy is that there are few hiccups to such a sweeping step:

 firstly, that personal laws, to a great extent, are somewhat sacrosanct.

And secondly, the personal laws are as good as ‘facts’ for a legal system which has embraced secularism. [[64]](#footnote-65)

One suggestion is an “*optional* Code”, provisions of which would apply “a sex-equal family law” to all religious communities with the consent of the women belonging to the respective communities”.[[65]](#footnote-66) Similar to the one drafted by the ‘*Forum Against the Oppression of Women’* in the 1990s.[[66]](#footnote-67)

Other suggestions include a system combining the enactment of a UCC with a regulated and state-recognized regime of alternative dispute resolution platform involving religious rules. This would help accommodate the women’s rights and their respective religious identities.[[67]](#footnote-68)

However, such an enactment, if made optional, at the discretion of women would seldom reflect women’s own free will, given the social conditions as well as community costs.[[68]](#footnote-69)

A different approach would be for ‘community led’ law reforms which accepts legal pluralism as a fact and “acknowledges the intersection of gender and religion”.[[69]](#footnote-70) According to Agnes “small and significant reforms within the personal laws governing minority communities have greater relevance to minority women than the rhetoric of an all encompassing and overarching Uniform Civil Code”.[[70]](#footnote-71) A UCC, “would inadvertently situate minority women in an antagonistic relationship against their own communities, and hence may not receive the support of women from these communities”.[[71]](#footnote-72)

**6. THE SUPREME COURT ON UNIFORM CIVIL CODE**

The Supreme Court's judgment in *Sarla Mudgal* v. *Union of India[[72]](#footnote-73)* has supported the adoption of a uniform civil code.

In the same judgement the Supreme Court had also observed that “Freedom of religion is the core of our culture **...** But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression. Therefore, a uniform civil code is imperative both for protection of the oppressed and promotion of national unity and solidarity.”[[73]](#footnote-74)

Although the question before the court did not pertain to uniform civil code, however, an inference can be drawn from the Court's language that there seems a judicial willingness for such a code that would protect all individuals, even within the framework of group rights.

Moreover, a division bench of the Supreme Court, headed by Justice Singh, had, back then, directed the Government of India to file an affidavit which had details of efforts pursuant to the enactment of a universal civil code as urged by Article 44 of the Constitution.

In the case of *John Vallamattom*v*. Union of India[[74]](#footnote-75)*the Court again made reference to a uniform civil code. The Court expressed regret that Parliament had still not framed a common civil code in order to fulfill the urging of Article 44 and urged that "a common civil code will help the cause of national integration by removing the contradictions based on ideologies."[[75]](#footnote-76)

Presently India suffers from an internal strife and communal violence almost every other day.[[76]](#footnote-77) The goal of harmonious multicultural (or religion) co-existence has not yet succeeded in India where manifestations of continued inter-group tensions and the “Support for personal laws relating to polygamy, divorce, property inheritance, and maintenance, all those that substantially affect the lives of women, lies at the centre of the historical resistance to the implementation of a uniform civil code”.[[77]](#footnote-78)

**7. SOLUTIONS**

As an alternative to a uniform civil code, I would suggest a constitutional amendment to Articles 25 and 29, making the “rights to practice religion and conserve culture subject to ensuring the right of equality between men and women”. Consequently, this Amendment would make all personal laws subject to the test of gender equality.

Moreover, an amendment on the above lines would further be justified by Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a signatory. Article 5 requires signatories to: “modify the social and cultural patterns of conduct of men and women, with a view of achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.[[78]](#footnote-79)

Such an amendment won’t (explicitly) deal with the personal laws of different religious communities but instead seeks and aims to protect them. Yet the amendment would negate claims of the right to practice gender discrimination based on religion or culture.

For example in the case of *S.R. Bommai* v. *Union of India*[[79]](#footnote-80), the Supreme Court held that “religion is a matter of individual faith and cannot be mixed with secular activities, which only the state can regulate by enacting laws”.[[80]](#footnote-81)Political leaders must be sensitive to increasing demands for recognition of religious and cultural rights, but with the caveat that consideration of such demands be subject to the limitations imposed by the Constitution and Article 5 of the CEDAW.

The Indian experience convincingly demonstrates that that there is a need to declare (with zero ambiguity) the superiority of the right to gender equality over demands for preserving the sovereignty of religious or cultural groups. This Declaration should be included with other fundamental rights in the basic text or law containing these rights, whether it is the Constitution or a Declaration of Rights.

Unless this is done, there are very little or no safeguards for the protection of women's rights and the assurance of gender justice.[[81]](#footnote-82)

**8. CONCLUSION**

“Religion is not a given, it is a negotiated reality": Kalpana Kannabiran[[82]](#footnote-83)

The social construct of religion has, in response to social transition, changing roles and global influence given way to women rights in India but still a very long way to go.

Moreover, in a society as saturated with religion as India’s, it is hard to effect real change without implicating religion in some measure.

Our courts often try to uphold ideas of freedom and equality and the constitutional promise of a pluralistic and inclusive society.

Indian legislators have not been very successful in prioritizing gender justice within the governance system which causes a lack of protection to women whose communities operate under the personal religious laws.

The court also has been inconsistent in applying the essential religious practice doctrine. Also, feminist literature inquiring various judgements conclude that the Hon’ble Supreme Court often does not deal with the intersectionality of gender and religious identity and seems less concerned with women’s rights, and more with the preservation of marriage somewhat similar to what the traditional i.e. non state institutions do.

The continued existence of two parallel legal systems (the clergy type and the courts) has resulted to a negative impact on the rights of Indian women in two key ways:

1. the very continuation of a system of personal laws operating paralleling has denied women their constitutional right to equal treatment,
2. the continued existence of this two-tier system somewhat reinforces patriarchal traditional practices.

After having pondered upon the plausibility of a uniform civil code which does not seem a good option in India for several good reasons, inter alia, A civil code won’t take care of instances such as female genital mutilation, which are peculiar to a community thus, doesn’t come within the purview of civil laws.

Moreover, in India, “support for the adoption of a uniform civil code has not been based on a recognition that women's rights might otherwise suffer under the personal laws” says Jain Pratibha.[[83]](#footnote-84)

A Uniform civil code, “would inadvertently situate minority women in an antagonistic relationship against their own communities, and hence may not receive the support of women herself from those communities”

Moreover, the recently published Law Commission of India’s report titled “Reform of Family Law” finds the implementation of uniform civil code undesirable at the present stage.[[84]](#footnote-85)

We can conclude that Uniform Civil Code can’t be a go to solution for the above mentioned problems. Instead, the suggested amendments to the provisions for Freedom of Religion making them subject to gender equality should be resorted to.

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