

**DE JURE NEXUS LAW JOURNAL**

Author:

Mrinalini Tripathi

Graduate in Law from Law Faculty of Agra College,

Masters in Law from Amity University, Noida.

**CRISIS OF INDIAN SECULARISM: A STUDY OF WOMEN RIGHTS  
IN LIGHT OF RELIGION & LAW IN INDIA**

**INTRODUCTION:**

‘Secularism’ as the word suggests consists of two elements, i.e. ‘secular’ which denotes something that is not in association with any religion & ‘ism’ denotes an ideology or a philosophy. Hence, in nutshell secularism is an ideology which is not in connection with any particular religion instead, it maintains all the religious affairs in a very neutral and peaceful manner.

The Preamble of Indian Constitution aims to constitute India as a sovereign, socialist, secular, democratic and republic state. The words ‘socialist’ and ‘secular’ were added by the Forty-second Amendment in the year 1976, introduced by H.R.Gokhale. It is the spirit or the essence of the Indian Constitution. The Indian society is a very diverse and multi-religious society which consists of various castes and religion. So, it becomes the duty of the state to handle the society with due care thereby respecting the morals and values of each caste or religion otherwise it will create a chaos in the society and can also cause a threat to the unity and integrity of the nation.

Since it is known that secularism is a vast concept, therefore it cannot be read in an isolated manner & so fraternity and secularism go hand in hand. The ultimate purpose of secularism is to promote fraternity which will assure unity and integrity of the nation and the dignity of the individuals. Fraternity is a feeling of oneness and brotherhood. Therefore, the interpretation

of the secularism has to be made with the purpose of promoting fraternity and if any of the interpretations of the secularism goes against the principle of fraternity then it will be held unconstitutional.

It is not needed to proclaim secularism just to grant religious freedom. Such freedom can emerge from Article 19 of the Indian Constitution. It is the secularism which maintains equality among all the religious groups i.e. secularism is not a standalone concept, and it flows from Article 14 of the Indian Constitution. As per Article 14, no individual shall be discriminated on the basis of religion, race, caste, sex or place of birth or any of them which clearly depicts that every person should be treated equally irrespective of the above mentioned factors.

Today's scenario in India is completely different. Secularism here in India seems to be vanished from the political scene. It is highly needed to recognise that the secularism is in crisis now as it has been overburdened. And it is overburdened because it is not able to bear the weight of too many political thoughts, projects and ambitions which it is bound to implode.

## **CHAPTER-I**

### **CRISIS OF WOMEN RIGHTS IN THE LIGHT OF RELIGION**

- **GENDER DISCRIMINATION:**

#### **Hindus:**

1. Consent of the girls is not very common and marriage is largely agreed between elders of the family and considerations differ from class, caste, dowry, horoscope and other social parameters than the suitability and the compatibility.
2. Child marriages in rural and tribal areas are still very common. One could marry at any age, there has being no lowest age of marriage. Remarriage is still a big problem and taboo.
3. The marriage is considered sacred and therefore a lot of impetus is on sustaining it regardless of the condition of the women in her in-laws family.
4. Suicidal death, dowry killings and female foeticide (despite a stringent anti dowry and female foeticide laws in our Country) are still very common.

5. Inheritance and divorce are generally not easily available to common women because of the social stigma and lack of financial independence. Hence the position of women, after marriage is not of equal partnership but that of a subservient or controlled party and much less than that of her husband.
6. Registration of Hindu marriage has not yet been made compulsory, even when the State Government makes the registration of marriage compulsory, non-registration does not render the marriage invalid.

**Muslims:**

1. Lack of education among Muslim women often leads to incompatible marriage.
2. Though prescribed in Islam, the consent of women is rarely a serious consideration in a largely traditional and patriarchal society and cultural backdrop. Consent at marriage is treated more as a kind of ritual than exercising a choice.
3. Non-payment of Mahr at the time of marriage and financial dependence of women often makes the women an unequal partner in the contract of marriage.
4. Polygamy and its strict compliance as per Sharia is often a misused provision among men and is often the reason of serious marital discord.

**Christians:**

1. The Christian church prohibits divorce and does not permit the annulment of marriage for any reason.
2. They are commanded by the church to spend their lives together however miserable their lives may be. Therefore, Christians have introduced the civil laws which permits divorce on slightest pretext.

**• MAINTENANCE OF MUSLIM WOMEN:**

Sec 125, of the Criminal Procedure Code, 1898 deals with the maintenance of wives and children. Muslim woman is entitled to maintenance only in two conditions; either she is not able to maintain herself after iddat period or if she has not re-married.

Let us take an illustration of a leading judgement to understand the situation of Muslim women i.e. *Shayara Bano vs Union of India (2016)* in this judgement the practice of Triple Talaq (Talaq-e-biddat) was held unconstitutional as it violated the fundamental rights. Under the Muslim law, this is the liability of the husband to maintain his wife, irrespective of her debt against her husband and has priority over the right of all other persons to claim

maintenance. Talaq-e-biddat is a practise which gives a man the right to divorce to his wife by uttering 'Talaq' three times in one sitting without his wife's consent. Nikah Halala is the most common practise in Muslim law where a divorced woman who wants to remarry her husband would have to marry, and get divorced, from the latter husband before she can go back to her former husband. And polygamy is a practice which permits Muslim men to have more than one wife. The issues which arose in this matter were:

- (1) Whether the practice of Talaq-e-Biddat is an essential practice of the Islamic religion?
- (2) Whether such practices infringe any of the fundamental rights guaranteed under the Indian Constitution?

The Supreme Court had on its own taken cognizance of the question whether the Muslim women faced gender discrimination due to divorce or other marriages by their husbands. Triple Talaq was supported by the All India Muslim Personal Law Board (AIMPLB), which is considered to be a non-governmental body which supervises the application of the Muslim personal law. It believes that the State does not have the right to intervene in religious matters which are protected under Article 25 of the Indian Constitution. Another BJP leader Subramanian Swami said that as such Triple Talaq as a practice is not present in the Quran and Shariat can be modified.

- **BATTLE OF SPIRITUAL RIGHTS OF WOMEN IN THE INDIAN SOCIETY:**

The independent nation is built on the basis of sovereignty, socialism, democracy, and secularity. But in India, secularism is not an absence of religion. Instead, it seeks to promote religious freedom and restricts any one religion being prioritized over another.

Religious women constitute a massive category, ethnicity and national origin. But questions around the freedom and rights of the religious women are still in conflict. Are the women being oppressed and discriminated by religion and its conservative norms? In India, this question is one of the competing fundamental rights that pits the equality those who practice religions versus the equality of women.

In the case of <sup>ii</sup>*Indian Young Lawyers Association Vs the State of Kerala(2006)* commonly known as *Sabrimala Temple Case* which has been very controversial and crucial to understand intertwining rights and freedoms of women and religious women in India. In 1993, India ratified the Convention on the Elimination of All Forms of Discrimination against

Women (CEDAW). It was drafted by the United Nations Commission on the Status of Women in 1979, CEDAW is an international treaty promising to end the discrimination faced by the women in all fields of life. The Indian judiciary has faced this dilemma again and again. One such illustration is the case of the Sabarimala Temple in the state of Kerala in the year 2018.

The Sabarimala Temple is an important pilgrimage site for the Hindus, visited by millions and millions of people each year. In the year 1990, decision was taken by the Kerala High Court legalizing to ban the women in the Temple during their menstruating age, but it was overruled by the Indian Supreme Court in 2018. 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.

This verdict was the result of the petition claiming infringement of the fundamental freedom of women by the Indian Young Lawyers Association back in the year 2006. If Hindu women are now entering the Sabarimala temple, would Muslim and Parsi rules regarding the entry of women in their respective places of worship have to change too? These were the kind of queries that women rights’ activists began asking soon after the verdict. <sup>iii</sup>“For our secular society to thrive, it is of utmost importance that all religions thrive side by side,” in the words of Sumitra Nair.

Women emphasized that the religious rights form the foundational basis of the nation and claimed that the motto of women’s empowerment is not sufficient enough of a justification to restrict religion. Practising Hindu women were empowered in their own ways and religious women have the rights to their own religious freedom. The Sabarimala Temple case was not the only such case struggle in the nation.

## **CHAPTER-II**

### **CRISIS OF WOMEN RIGHTS IN THE LIGHT OF LAW**

- **SEXUAL HARASSMENT AT WORKPLACE:**

No sector remains untouched by sexual harassment, or unaffected by its impacts. Tolerating or failing to adequately respond to sexual harassment can block women’s and other targets’ economic security, access to the opportunities, which serves to preserve the status quo. Men,

particularly those who don't conform to traditional masculine norms, and others seen as outsiders, like LGBTQ and gender non-conforming people, can be targets as well.

Almost in every field, we found that it's not just the managers, supervisors, or those in power who sexually harass targets but harassment can come from co-workers as well, as it is the case for some hostile work environment claims.

Workers in the low-wage sector may tolerate sexual harassment because they need their jobs to survive and have few options. Male-dominated blue collar jobs pay better than jobs in female-dominated sectors and the gender pay gap between men and women is among the smallest of any sector. So targets that are being set by the company may sometimes lead to ignorance of sexual harassment, or refuse to file a complaint against harasser, in the fear of losing a good-paying job. It's not like that only low paid professionals suffer but high wage professionals may also stay in toxic, sexually harassing environments because they've invested so much education, time, and efforts in building their careers, networks, or reputations, that the risk of being labelled a pariah, or ostracized, can keep victims silent.

Basically, it is harming the dignity of an individual by treating lower class females as objects, this is in no case promoting secularism as secularism is not limited to religion, and instead it extends to promote fraternity which has an obligation of maintaining dignity of an individual. One of the leading judgements in this context was <sup>iv</sup>*Vishakha & Ors. Vs The State of Rajasthan (1997)* in which Supreme Court laid guidelines in this regard but the enforcement of these guidelines is still not done.

It only emphasizes on the women at workplace but what about those females who are recruited in defence forces which is a male dominated sector? It doesn't pay importance to it and here is where secularism gets defeated. Also, in the year 2018, Me Too Movement came in highlight and the news was over flooded with the incidents of sexual assaults. In film industry also which is considered as a workplace for actors, no matter whether the actor is highly paid or low paid, few of them came in limelight with their horrible incidents which is ultimately destructing the Indian society by leaving it into fragments. Now in this case where are unity, integrity and dignity? Answer to this question is that, the idea of secularism that is all to be treated equally by respecting each person irrespective of their caste, sex, race, religion, place of birth or any of them kept at stake.

- **UNIFORM CIVIL CODE:**

Uniform Civil Code is a proposal to replace personal laws of each major religious community in India with a common set governing every citizen of India. These laws are distinguished from the public laws and it covers marriage, divorce, inheritance, adoption and maintenance.

India is a diverse nation and it comprises of various communities that derive their personal laws based on their religious beliefs. The decision of the current government is to ensure that all citizens are governed by a single law. The main motive of UCC is to provide justice and equality to the people of all religions and sets.

In a country that prides itself on being the world's largest democracy and where debates on secularism occupy the centre stage every other day for a woman of that country to still file petitions for seeking maintenance from their husbands after being divorced in a very abrupt way. So, as per the current situation and the alarming rise in gender crimes the UCC will unite the society against the evils like gender inequality and misogyny. The entire world will see a rise in religious extremism and that is how India will be able to set a classic example of how a diverse nation stands united.

Although, Article 44 of the Indian Constitution says, "state shall endeavour to provide for its citizens a Uniform Civil Code throughout the territory of India." It guarantees UCC to all the citizens of India without abridging the fundamental rights such as right to practice religious functions and here is where the debate arose when the question came of making certain laws applicable to all citizens in this aspect. This debate then slowly shifted upon the Muslim Personal Law, which is partially based on Sharia Law, allowing unilateral divorce and polygamy. Actually, detractors contend that it will be a kind of robbery of religious diversity towards nation and also it will violate the fundamental right to practice religion enshrined in Article 25 of the Indian Constitution.

One of the landmark judgements which highlighted the need for Uniform Civil Code is *Sarla Mudgal vs Union of India (1995)* in which Supreme Court discussed the issue of bigamy, the difference of point of views between the personal laws existing on the matters of marriage and invokes Article 44 of the Indian Constitution. One of the most important principles of Hindu law is monogamy. A marriage which cannot be dissolved except under the provisions which are mentioned in Section 13 of the Hindu Marriage Act. In that situation, couple who has married under the Act remain married even if the husband converts to Islam for the purpose to marry with the other person. The second marriage would

therefore, be illegal marriage as it will be the violation of the provisions of the Act and as such would be under Section 494 of Indian Penal Code.

### **CONCLUSION:**

Taking away the rights of women will somewhere defeat secularism on the battleground. Women in Indian society have been victims of ill-treatment, humiliation, torture, and exploitation for as long as written records of social organization and family life are available. These records are repeated with incidents of crimes such as abduction, rape, murder and torture of women. It is said that one way to analyse the nation is to go through the status of its women. Actually, the status of women represents the standard or the level of culture of any age. However to conclude about the position of women is a very difficult and complicated issue. There was equality between both the male and female. Females were given freedom to move about in the society and to participate in public life. This gives us a suggestion as to how they had realized the fact that females too have their own contribution in the development and progress of the society. Modern India is a direct result of this contradiction in the colonial mission in which Hindu, Muslim, Christian women of other religion experienced profound differences in legal rights and political agency.

It can be concluded from the above presentation of thoughts upon UCC that for an ideal state, it would act as the safeguard of citizen's rights. Its adoption will lead to a progressive legislation in the nation. With the changing scenario, the need has arisen to have UCC for all the citizens of India thereby ensuring the fundamental and constitutional rights stay protected. Secularism and national integrity will be strengthened by introducing UCC in our state. In brief, it will ultimately help in the upliftment of the society thereby not disturbing the core of the Indian Constitution.

---

<sup>i</sup> *Shayara Bano vs Union of India (2016)* <https://indiankanoon.org/doc/115701246/>

<sup>ii</sup> *Indian Young Lawyers Association vs State of Kerala (2006)* <https://indiankanoon.org/doc/163639357/>

<sup>iii</sup> <https://towardfreedom.org/story/religious-women-and-the-struggle-for-rights-in-india/>

<sup>iv</sup> *Vishakha & Ors. vs State of Rajasthan (1997)* <https://indiankanoon.org/doc/1031794/>

<sup>v</sup> <https://indiankanoon.org/doc/1389817/>

<sup>vi</sup> *Sarla Mudgal vs Union of India (1995)* <https://indiankanoon.org/doc/733037/>



# De Jure Nexus

LAW JOURNAL