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INDIA'S CONSTITUTIONAL DESIGN AND THE RAFT OF RESOLVING DIVISION THROUGH CONSTITUTIONAL ENGINEERING

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ABSTRACT

The Indian Constitution embodies its core principles through a well-structured framework, emphasising the rule of law, equality, and protection against arbitrary power. It enshrines fundamental rights and duties, fostering a welfare state by addressing social needs through Directive Principles of State Policy. The Constitution establishes the executive, legislature, and judiciary, maintaining checks and balances. Yet, the Constitution grapples with India's diverse society. While it champions formal equality, discussions continue to achieve substantive equality through protective laws for disadvantaged groups. While women are ensured equal access to the public sphere, specific provisions for reservations in their favour are absent. Over time, legislative and judicial actions have furthered substantive equality. India's incrementalist approach sets an example for other emerging democracies facing identity and religion-state conflicts. Acknowledging societal complexities, the Constitution evolves gradually, promoting stability and inclusivity. Constitutional engineering, involving elected officials, experts, and the public, is pivotal. Timing, influenced by history and transitions, matters, with deliberations and negotiations accommodating diverse interests. The recent Law Commission of India's notice on the Uniform Civil Code (UCC) is noteworthy.

The UCC aims to replace religious-based personal laws with a unified set of laws, ensuring consistency and harmony. Presently, various communities follow distinct personal laws, leading to inequalities in family, succession, and property rights. Constitutional engineering strives to create a constitution aligned with democratic principles, rights protection, and effective governance, tailored to a society's context. The UCC's proposed implementation seeks to replace religious personal laws with a uniform set, promoting harmony in personal matters. This shift aims to address disparities and inequalities that result from religious-based laws. As India moves forward

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with these discussions, learning from global experiences is crucial to ensure successful and well-balanced designs.

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1. INTRODUCTION

The Indian Constitution's Preamble embodies the values of the freedom struggle, establishing India as a sovereign, democratic, socialist, and secular nation committed to justice, liberty, equality, and fraternity. In a society divided by ethnicity, religion, and other differences, inclusive political systems are crucial for harmony and stability. The 2011 religious composition revealed India's diversity: Hindu 79.8%, Muslim 14.2%, Christian 2.3%, Sikh 1.7%, Buddhist 0.7%, Jain 0.4%, Other Religions & Persuasions 0.7%, Religion Not Stated 0.2%. The debate revolves around institutions' role in shaping political outcomes, with institutional choice and constitutional engineering being key approaches. Certain democratic institutions can mitigate conflicts, while others emphasise bargaining processes. Constitutional design also impacts gender relations, influenced by historical movements and nationalist discourse on womanhood in India. The "woman question" was sidelined during the freedom struggle. Designing constitutions in religiously divided societies is intricate and context-specific. Case studies help understand constitution-making nuances and draw lessons to address religious divisions effectively. This requires considering history, culture, politics, and law. While institutions shape outcomes, their effectiveness in conflict mitigation depends on context. Therefore, addressing societal differences and promoting gender equality demands a comprehensive, inclusive approach. In this paper, we shall emphasise on challenges faced by a constitution in a divided society, may it be by religion or gender, and the ways in which the Indian constitution has embraced these challenges.

2. INDIA'S CONSTITUTIONAL DESIGN

The British influence on Indian governance led to significant changes in legislative representation. The Indian Councils Act of 1861 expanded the Executive Council of the Governor-General to include some non-official members, with Indians represented through nomination. However, the Legislative Council remained non-representative and non-deliberative. The 1892 Act increased the Council's size and allowed limited discussion on financial matters, but the Governor-General retained maximum power. The Mor1ley-Minto Reforms of 1909 introduced an element of indirect elections and granted separate electorates for Muslims, promoting communal sentiments, and dividing the nation along religious lines, as part of the British "divide and rule" policy.[1]

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[1] D. K BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA (Lexis Nexis 2013)

The Government of India Act of 1919 introduced a bicameral legislature, dividing subjects into central and provincial categories, with "transferred" and "reserved" subjects forming "dyarchy." The Act faced opposition, leading to protests like the Non-Cooperation Movement. The Government of India Act of 1935 introduced a federal structure with federal, provincial, and concurrent lists, abolishing provincial dyarchy but retaining it centrally. The Act established a Federal Court and the Governor-General's authority. The Cripps Mission of 1942 proposed dominion status, rejected, which led to the 1946 Cabinet Mission, setting up a Constituent Assembly. The Indian Independence Act of 1947 granted independence, establishing an interim Constituent Assembly for drafting the Constitution. On the Indian front, the 1928 Nehru Committee Report, led by Motilal Nehru, proposed fundamental rights, equality, voting rights, and federalism. Jinnah's 14 Points sought separate electorates and rights for Muslims. The 1931 Karachi Resolution emphasized "Purna swaraj" and socio-economic liberties, influencing the Directive Principles of State Policy. The Constituent Assembly, comprising members elected from provinces, took almost three years to finalize the Constitution. The Objectives Resolution guided the drafting process. Gandhi envisioned equality, eradicating untouchability, and empowering women. Ambedkar aimed at eliminating inequality but with distinct approaches. His contributions, including the Preamble, mirrored the Assembly's vision for an equitable and independent India.[2]

The values that motivated and steered the freedom struggle, which was nurtured by it, find their embodiment in the Preamble to the Indian Constitution. It signifies the collective will of the people, as the Constitution was created by the representatives of India, not imposed by a foreign authority. It establishes India as a sovereign nation, free from colonial rule, with governance undertaken by its people. The state is envisioned as a socialist welfare state, committed to eradicating socio-economic inequalities. India's government is democratic, allowing equal political rights and accountability through elected rulers. It operates as a republic, with elected heads of state. Justice is ensured by preventing discrimination based on caste, religion, or gender, and striving for the welfare of all, especially the disadvantaged. Liberty grants citizens the freedom to express their thoughts and take action. Equality is emphasised by treating all as equals before the law and promoting equal opportunities for everyone. Fraternity fosters true equality and liberty, breaking down socio-economic hierarchies and promoting the equality of all individuals.[3]

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[2] Dr. J. N PANDEY, CONSTITUTION LAW OF INDIA (Central Law Agency 2022)
[3] Ibid

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The Indian Constitution's institutional design aimed to embody and realise its guiding principles. It established the rule of law, emphasising equality before the law and protection against arbitrary power. The Constitution enshrined fundamental rights, based on equity, along with fundamental duties. India aspired to be a welfare state, addressing social welfare through Directive Principles of State Policy. The Constitution defined the executive, legislature, and judiciary, maintaining separation of powers and checks and balances. It featured a federal structure with unitary aspects. The territory was divided into states, asserting more power to the centre. Subjects of administration were divided into Union, State, and Concurrent Lists, and Panchayats and Municipal Corporations gained jurisdiction through constitutional amendments. The Constitution provided a bicameral system for the Central Legislature to maintain federal equilibrium. However, the Center held supremacy in case of conflicting laws in the Concurrent List. Emergency provisions and a unified judiciary showed unitary features. The control of Union Territories rested with the Center. Overall, the Indian Constitution's institutional design aimed to uphold democracy, justice, liberty, equality, and fraternity, ensuring a balance of power and governance for the welfare of all citizens.

India's foundational democracy pillars stem from its freedom struggle and are encapsulated in the Constitution's Preamble. This poetic essence guides the Constitution, influencing laws and actions. Like other nations, India's Preamble reflects its constitutional spirit. It embodies foundational values and serves as a benchmark for laws. However, a constitution transforms philosophy into practical institutions. India's detailed Constitution requires periodic amendments to match societal shifts. While its legal language might challenge new readers, its fundamental structure is clear. It defines selecting officials, and power distribution and safeguards citizens' rights. The Constitution's core aspects encompass procedural governance, power allocation, and citizen rights protection. [4]

3. DIVIDED SOCIETIES

Divided societies are characterised by deep and persistent societal diversity based on factors such as ethnicity, religion, culture, language, or other significant differences. These divisions often result in social, political, and economic challenges, as different groups within the society may have conflicting interests, historical grievances, and identity-based tensions. In such societies, it becomes crucial to establish institutional mechanisms that can effectively manage and mitigate these divisions to promote harmony and stability. The core challenge for divided societies lies in finding

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[4] *Chapter 2: Constitutional Design*, NCERT (July 21, 2023, 5:00 PM), https://ncert.nic.in/textbook/pdf/iess402.pdf

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ways to bridge the gaps between various diverse and foster a sense of unity and shared identity among diverse groups. Failure to address these divisions can lead to tensions, conflicts, and even violence, undermining social cohesion and hindering progress and development. One of the essential mechanisms for addressing societal differences is the establishment of an inclusive and representative political system.

In some cases, the international community may also play a significant role in supporting peace-building and reconciliation efforts in divided societies. Mediation and diplomatic interventions can help facilitate dialogue and negotiations between conflicting groups, aiming to find common ground and peaceful solutions. Northern Ireland, Bosnia and Herzegovina, Cyprus, the Netherlands, India, Belgium, and other countries facing societal divisions must grapple with the complexities of their unique contexts. Each situation requires tailored approaches, considering historical, cultural, and political factors. While addressing societal variation is undoubtedly challenging, successful resolution can lead to more resilient and prosperous societies that embrace diversity and thrive on collective strengths.[5]

The Registrar General and Census Commissioner of India released 2011 Census data on religious population distribution. The report categorized India's 121.09 crore population into Hindu (79.8%), Muslim (14.2%), Christian (2.3%), Sikh (1.7%), Buddhist (0.7%), Jain (0.4%), "Other Religions and Persuasions" (0.7%), and "Religion not stated" (0.2%). From 2001-2011, Hindu population declined by 0.7%, Sikh and Buddhist populations by 0.2% each, while Muslim population grew by 0.8%. Christians and Jains remained stable. India's total population grew 17.7% during this decade, Muslims grew 24.6%, Christians 15.5%, Hindus 16.8%, Sikhs 8.4%, Buddhists 6.1%, and Jains 5.4%. These figures reveal demographic dynamics and challenges India faces due to religious diversity. These divisions impact governance, national identity, and peace efforts. Constitutional reforms addressing power allocation, minority rights, and resource distribution are vital for peace-building in this context. Constitutions offer stability and adaptability, crucial for lasting peace post-conflict.[6]

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[5] Fisnik Korenica and Dren Doli, *The Politics of Constitutional Design in Divided Societies: The Case of Kosovo*, 6 CROATIAN YEARBOOK OF EURO. L. & POL. (2010)

[6] Tom Ginsburg, *Constitutional Design for Territorially Divided Societies*, INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE (July 30, 2023, 6:30 PM), https://www.idea.int/sites/default/files/publications/constitutional-design-for-territorially-divided-societies.pdf

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4. CONFLICT RESOLUTION IN DIVIDED SOCIETIES THROUGH "CONSTITUTIONAL ENGINEERING"

Constitutional engineering, also known as constitutional design, refers to the process through which political actors create a higher law, often formalised in a written document known as the constitution. This constitution serves as the foundational framework for the governance of a country, outlining the principles, structure, and functioning of its political system. During the process of constitutional engineering, certain fundamental questions related to organization and procedure must be addressed. These questions include determining who will be involved in the constitution-making process, when their involvement will take place, and how they will proceed in formulating, discussing, and ultimately approving the constitution.[7]

The composition of the actors involved in the constitutional engineering process is a crucial aspect. Typically, it involves representatives of the society, such as elected officials, political leaders, legal experts, and sometimes members of the public. The inclusion of diverse perspectives is essential to ensure that the Constitution reflects the needs and aspirations of the entire population. The timing of the constitution-making process is another critical consideration. It may occur during significant historical moments, such as after gaining independence or following a major political transition or crisis. Timing can influence the level of urgency and the scope of changes considered necessary for the new constitution. The manner in which actors proceed in formulating the constitution is also vital. Deliberative discussions, debates, and negotiations are common elements of the process. These interactions allow for the exchange of ideas, the accommodation of various interests, and the resolution of conflicts. It is essential to strike a balance between diverse perspectives to achieve a constitution that promotes stability and legitimacy.

While there can be numerous variations in the constitutional engineering process, several common patterns emerge. Some countries may adopt a participatory approach, involving widespread public consultation and engagement, while others may have a more top-down approach led by a specific elite group. Additionally, constitutional engineering may involve learning from the experiences and constitutions of other countries. Comparative analysis can offer valuable insights into successful constitutional designs and help avoid potential pitfalls. Overall, constitutional engineering is a complex and dynamic process that requires careful consideration of the unique context and

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[7] Zachary Elkins, *constitutional engineering*, ENCYCLOPAEDIA BRITANNICA (July 31, 2023, 6:00 PM), https://www.britannica.com/topic/constitutional-engineering

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challenges faced by a particular society. The ultimate goal is to create a constitution that upholds democratic principles, protects individual rights, and provides a stable foundation for effective governance.[8]

4.1 Gender implication on the Constitutional Design of India

Apart from the general divisions made on the basis of culture, religion, caste, creed etc., gender also greatly divides society, into men, women and in recent years the third gender. In this paper, we shall only focus on India's constitutional design's impact on women. Understanding the process of framing a constitution goes beyond examining the proceedings of the constituent assembly. To effectively assess the changes in gender relations brought about by the constitution, one must consider the legacy of social reform movements and discourses on womanhood during the nationalist period in India. Indian nationalists strategically employed the discourse of social reform to shape a new identity as progressive Indians seeking liberation from British rule.[9] During this struggle for freedom, the debate on the "woman question" was suppressed, reducing women to objects rather than active participants.[10] This reflected the nationalists' unwillingness to engage in discussions about women's rights with the British. In this context, women were denied agency and relegated to a subordinate position, serving as a reflection of the nationalists' refusal to address gender equality in their fight for independence.

The liberals among the nationalists advocated for social reforms, including women's education, intending to restructure the domestic sphere and transform women into "more rational companions to their husbands." They saw education as a means to enhance women's role within the home while still preserving traditional gender roles. On the other hand, cultural nationalists resisted any interference in the domestic sphere and advocated for the preservation of Indian traditions without challenging social hierarchies and distinctions based on caste and gender.[11] Both schools of thought maintained a clear separation between the private sphere of the home and the public world, which perpetuated existing social hierarchies. In this context, the constitution-making process needs to be

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[8] DONALD L. HOROWITZ, CONCILIATORY INSTITUTIONS AND CONSTITUTIONAL PROCESSES IN POST-CONFLICT STATES,1241, (Volume 49, Issue 4., 2008)
[9] KUMKUM SANGARI & SUDESH VAID, RECASTING WOMEN: ESSAYS IN COLONIAL HISTORY (Zubaan 2013)
[10] PARTH CHATTERJEE, THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES (Princeton University Press 1993)
[11] GALI MINAULT, THE EXTENDED FAMILY: WOMEN AND POLITICAL PARTICIPATION IN INDIA AND PAKISTAN (1990)

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analysed within the broader historical and social context of India's nationalist movement and the discourses on women's roles and rights. The constitution itself may not have explicitly addressed gender issues, as it was influenced by the prevailing ideologies of the time that often marginalised women's rights and reinforced traditional gender roles. To truly measure the impact of the constitution on gender relations, it is essential to understand the historical background and the ideologies that shaped the discourse on women's roles during the nationalist period.[12]

As the 20th century approached, the debate on women's rights extended beyond men, as women themselves became increasingly aware of their disadvantaged status and sought to challenge it. Organising into associations with specific and general objectives, they aimed to improve the social conditions of women. These efforts involved various initiatives, such as promoting education for women, establishing schools and training centres, creating job opportunities for those in need of income, and building shelters for widows, among other endeavours.[13] While their approach differed from Western feminism, which often demanded complete equality with men, these women's movements in India focused on creating a space for women's active participation and recognising the significance of their distinct qualities. The 'social feminism' they practiced helped pave the way for subsequent women's rights movements in India, contributing to the ongoing struggle for gender equality and women's empowerment in the country. [14]

Legal change plays a crucial role in transitional and post-conflict processes. The rule of law and the reform of legal institutions are seen as essential tools to facilitate broader political, economic, and social transformations. The potential impact of legal and constitutional changes on women's lives necessitates a comprehensive understanding of the context in which most women live. For instance, more than one-third of women reside in low-income countries, and despite generally having longer life expectancy than men, some women face social disadvantages resulting in equal or shorter life spans. [15] In countries with long-term, cyclical, or protracted conflicts, women and girls often experience social and legal inferiority. Unequal power dynamics, reinforced by social norms and

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[12] ANUPAMA ROY, GENDERED CITIZENSHIP: HISTORICAL AND CONCEPTUAL EXPLORATIONS (Orient BlackSwan 2013).

[13] APARNA BASU & BHARATI RAY, WOMEN'S STRUGGLE: A HISTORY OF THE ALL INDIA WOMEN'S CONFERENCE, 1927-2016 (Manohar Publishers & Distributors 2018)

[14] ANUPAMA ROY, GENDERED CITIZENSHIP: HISTORICAL AND CONCEPTUAL EXPLORATIONS (Orient BlackSwan 2013).

[15] *Women and health : today's evidence tomorrow's agenda*, WORLD HEALTH ORGANIZATION (July 27, 2023, 5:00 PM), https://apps.who.int/iris/bitstream/handle/10665/44168/9789241563857_eng.pdf?sequence=1&isAllowed=y

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legal practices, lead to differential access to resources crucial to women's well-being, such as health care, education, income, and political representation. Men usually hold greater political, social, and economic control in such societies, impacting the conduct and resolution of conflicts and determining whose voices are heard in peace negotiations.

During the 1920s, women's organisations in India made significant progress in social work aimed at eliminating and improving societal issues known as "social evils." Additionally, they engaged in advocacy for legislative protection for women and the recognition of specific rights. During this time, two distinct rationales for women's rights emerged within these organisations. One perspective emphasised that women and men complemented each other, highlighting the crucial and socially valuable role of women as mothers and in domestic settings. The focus was on women's significant contribution to society within their traditional roles. Concurrently, another perspective gained momentum, asserting that women shared the same needs, capacities, and aspirations as men, and therefore, should be entitled to equal rights and opportunities.[16] Chattopadhyaya[17] argued that Indian women sought political rights not to compete with men but to fulfil their civil duties. This view suggested that women desired political participation to actively engage in civic responsibilities rather than to compete for supremacy with men. As women's organisations worked towards their goals, these diverse rationales underscored the complexity of the women's rights movement in India during the 1920s. While some advocated for recognition of women's unique roles, others focused on gender equality and equal rights. These differing perspectives contributed to the multifaceted nature of the movement and reflected the evolving ideas and aspirations of Indian women during that era.

The process of framing India's constitution cannot be fully understood solely through the constituent assembly's proceedings. To assess the constitution's impact on gender relations, one must consider the legacy of social reform movements and discourses on womanhood during the nationalist period. Indian nationalists employed the discourse of social reform to shape a progressive identity and advocate for freedom from British rule. The debate on women's rights was stifled in this discourse, reducing women to objects rather than active participants. Liberals supported social reforms, envisioning women as rational companions to their husbands, while cultural nationalists sought to preserve Indian traditions, maintaining distinctions based on caste and

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[16] RADHA KUMAR, THE HISTORY OF DOING: AN ILLUSTRATED ACCOUNT OF MOVEMENTS FOR WOMEN'S RIGHTS AND FEMINISM IN INDIA, 1800-1990 (Kali for Women 1993)
[17] KAMALA DEVI CHATTOPADHYAY, INDIAN WOMEN'S BATTLE FOR FREEDOM (2011)

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gender. Women themselves awakened to question their status, forming associations to improve their social conditions through education, work opportunities, and shelter provision. Although they did not label their efforts as feminism in the Western sense, they practiced what Forbes called 'social feminism,' acknowledging women's unique qualities and equal contributions to society.[18] Overall, the discourse on women's rights and equality in India's nationalist period combined elements of social reform, gender complementarity, and equal rights. Women's organisations used nationalism to advance their cause but often framed their claims within traditional gender roles and societal expectations.[19]

The Indian Constitution does not explicitly mention the term 'gender,' but the words 'sex' and 'gender' were likely considered synonymous by its framers. The Constitution enshrines values of liberty, equality, and justice in its Preamble, and Article 14 guarantees equal protection under the law. However, explicit provisions for sex equality are framed negatively, prohibiting discrimination by the state and in employment and electoral inclusion. Notably, there are no special provisions for women in Part XVI of the Constitution. The usage of the term 'He' in articles on citizenship holds symbolic implications for women as full members of the political community. Nevertheless, Article 367 allows for the interpretation of the Constitution[20] according to the General Clauses Act of 1897, which states that words importing the masculine gender include females. This ensures equal rights for both men and women to transmit citizenship to their descendants. However, the definition of Anglo-Indians based on patrilineality reflects a patriarchal bias.

Scholars have debated whether the Indian Constitution enshrines formal or substantive equality. Some argue it upholds formal equality, while others see it as promoting substantive equality by allowing special protective legislation for disadvantaged groups. The Constitution forbids exclusion in the electoral arena based on sex, but the right to vote is not explicitly stated as a fundamental right. There is no mention of the right to contest elections in the Constitution either. The Constitution empowers the state to make special provisions for women and children to remove discrimination. However, it lacks provisions for reservation of posts for women, leaving it to administrative discretion. Articles 15(1) and 15(2) prohibit discrimination by the state and ensure

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[18] ANUPAMA ROY, GENDERED CITIZENSHIP: HISTORICAL AND CONCEPTUAL EXPLORATIONS (Orient BlackSwan 2013).
[19] Ibid
[20] INDIA CONST. art. 367

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equal access to the public sphere for women. Still, they fail to address discrimination within families and the exploitation of women at home.

Article 15(3) justifies special provisions as a form of protective affirmative action, assuming women's weakness and dependence. The Constitution does not specify any special provisions for women explicitly, but Article 13 invalidates existing laws that violate Fundamental Rights, including gender equality[21]. Article 21 guarantees the right to life and personal liberty to all[22], which has implications for issues like female foeticide and infanticide. In the case of *Suchitra Srivastava v. Chandigarh Administration* [23], the Court ruled that the 'right to make reproductive choices' is a part of 'personal liberty,' encompassing both procreation and abstention from procreation. While formal legal equality has been guaranteed to Indian women, legislative enactments and judicial interpretations have gradually contributed to substantive equality in the years following independence.[24]

4.2 Resolving Inter-religious Conflict Via Constitutional Engineering

Aslı Bali & Hanna Lerner in their paper on *Constitutional Design without Constitutional Moments: Lessons from Religiously Divided Societies*,[25] discuss that, the challenge of democratic constitution-drafting in religiously divided societies is commonly examined through a single case-study of a specific country, considering its distinctive historical, cultural, political, and legal circumstances. This approach allows researchers to gain valuable insights into the complexities and nuances of constitution-making in such societies, providing a more comprehensive understanding of how diverse factors impact the process. By analysing the unique context of each country, scholars can draw relevant lessons and tailor constitutional solutions to address the specific dynamics of religious divisions within that society.[26]

During the three-year process of drafting the Indian Constitution, which began in December 1946 and concluded in January 1950, discussions on India's religious identity were central to the debates

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[21] INDIA CONST. art. 13
[22] INDIA CONST. art. 21
[23] Suchitra Srivatava v. Chandigarh Administration, (2009) 14 SCR 989
[24] Alisha Dhingra, *Gender Discourses and the Making of the Indian Constitution,* 29 IND. J. OF GEND. STUD. (2021)
[25] Aslı Bali & Hanna Lerner, *Constitutional Design without Constitutional Moments: Lessons from Religiously Divided Societies*, 49 CORNELL INT'L L. J. (2016)
[26] RAJEEV BHARGAVA, THE PROMISE OF INDIA'S SECULAR CONSTITUTION (Oxford University Press 2010).

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among the Indian drafters. The main points of contention were inter-religious issues between the Hindu majority and Muslim minorities, as well as intra-religious issues, specifically regarding the state's involvement in religious practices. The Constituent Assembly intensely debated questions like: What is India's identity, and to what extent is it exclusively Hindu? How should Muslims and other religious minorities be accommodated in India? Should the state interfere in religious practices that conflict with principles of equality and liberty, regardless of whether they belong to the majority or minority religions? The Assembly also grappled with defining secularism in India and determining the relationship between various religious traditions and the emerging secular legal system. These questions shaped vigorous deliberations within the Constituent Assembly.[27]

During the second stage of constitutional drafting, which lasted approximately two and a half years from after partition until January 1950 when the new constitution was enacted, the separation of Pakistan did not significantly alter the perception of independent India among the Constituent Assembly's leadership. The framers of the constitution were well aware that partition would not resolve India's religious diversity issue. Jawaharlal Nehru, in a statement[28] made three years before partition, expressed his concern about dividing India solely on religious lines between Hindus and Muslims. He argued that such a division would not effectively separate the followers of these two major religions since they were dispersed throughout the country. Even if regions with majority populations of one religious group were separated, substantial religious minorities belonging to the other group would still exist in each area. This realisation led the framers to understand that partition would not be a comprehensive solution and, instead, might create multiple problems instead of addressing the core issue. The understanding of India's religious diversity and the complex distribution of religious communities throughout the country influenced the approach of the Constituent Assembly during this stage. It prompted them to deliberate extensively on how to create a constitutional framework that would safeguard the rights and interests of all religious groups, ensuring the peaceful coexistence of diverse communities within the newly independent nation. This focus on accommodating religious diversity was integral to shaping the principles and provisions of the final constitution of India.

During the second stage of drafting the Indian Constitution, the question of personal law became a central focal point in both the intra-religious and inter-religious debates. Within the Constituent

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[27] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (OUP India 1973).
[28] JAWAHARLAL NEHRU, THE DISCOVERY OF INDIA (Penguin India 2008)

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Assembly, discussions revolved around whether Hindu family law should be secularised by the state or retain its traditional and often unequal practices. While Jawaharlal Nehru advocated for reforming Hindu family law to promote India's development and modernisation,[29] conservative elements and Hindu fundamentalists within the Congress Party opposed such reforms.[30] At the inter-religious level, the Assembly faced a sharp divide over the Uniform Civil Code, debating whether personal law should be unified for all citizens, regardless of their religious affiliations.[31]

In the 1950s, the Indian legislature engaged in ongoing debates surrounding the Hindu Code, which aimed to reform Hindu family laws. Eventually, the Code was divided into four separate pieces of legislation and passed between 1955 and 1961. These laws introduced significant reforms pertaining to marriage, divorce, inheritance, and adoption within the Hindu community. However, the Uniform Civil Code, which sought to unify personal laws for all citizens regardless of religious affiliation, was not implemented. As a result, India maintained a system of separate personal laws for each religious group, leading to only minor reforms in the traditional Muslim and Christian personal laws. The lack of uniformity in personal laws remained a topic of contention and continues to be debated in India's legal and political spheres.[32]

During the constitutional debates, the Indian framers employed incrementalist strategies to navigate religious conflicts in the Constituent Assembly. These strategies included deferring contentious decisions, using ambiguous formulations on sensitive matters like personal law, and incorporating non-justiciable provisions, such as Article 44, in the constitution[33]. The adoption of reformist provisions to address caste inequality was more straightforward, as there was a broader consensus among Assembly members. While some critics view these incrementalist strategies as compromises or a failure to achieve a more liberal constitution, they actually present a practical and pragmatic approach. Dealing with issues related to religious and linguistic diversity was more complex, and the drafters believed it was prudent to wait for a broader consensus to emerge gradually.

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[29] Reba Som, *Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?*, 28 MOD. ASIAN STUD. 165 (1994).
[30] CHRISTOPHE JAFFRELOT, THE HINDU NATIONALIST MOVEMENT IN INDIA (Columbia University Press 1996).
[31] Constituent Assembly Debates: Official Report, PARLIAMENT DIGITAL LIBRARY (July 31, 2023, 6:30 PM), https://eparlib.nic.in/bitstream/123456789/763009/1/cad_23-11-1948.pdf
[32] Narendra Subramanian, *Making Family and Nation: Hindu Marriage Law in Early Postcolonial India*, 69 J. ASIAN STUD. 771, 773 (2010).
[33] INDIA CONST. art. 44

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The incrementalist approach taken by the Indian drafters offers a valuable model for other emerging democracies facing similar conflicts over national identity and religion-state relations. [34] It recognises the need to address contentious issues gradually, acknowledging the diverse and complex nature of societal beliefs and values. Similar strategies have been employed by drafters in other countries to tackle religious conflicts and achieve workable democratic constitutions.[35] By taking incremental steps and accommodating differing perspectives, the Constitution can evolve over time to better reflect the changing social and political landscape while promoting stability and inclusivity.

5. WILL UCC RESOLVE CONFLICT AMONG THE DIVIDED SOCIETIES?

The Uniform Civil Code (UCC) is a concept enshrined in Article 44 of the Directive Principles of State Policy in the Indian Constitution.[36] This article lays down a guiding principle for the state to strive towards implementing a uniform set of civil laws that would apply to all residents of India, regardless of their religious affiliations. In essence, the UCC advocates for "One Nation - One Law," aiming to replace the existing personal laws, which are currently based on the religious scriptures and customs of various communities, with a single set of laws that would govern every citizen of the country. The primary objective of the Uniform Civil Code is to bring uniformity and harmony in personal laws that pertain to crucial aspects of an individual's life, such as marriage, divorce, inheritance, adoption, and maintenance. At present, different religious communities in India follow their own distinct personal laws, which often lead to disparities and inequalities in matters related to family, succession, and property rights.

On June 14, 2023, the 22nd Law Commission of India released a public notice[37], it announced their decision to look into the views of the public and recognised religious organisations in the Uniform Civil Code (UCC). The Uniform Civil Code aims to establish a common set of civil laws applicable to all Indian residents, irrespective of their religious affiliations, promoting the concept of "One Nation - One Law." The Commission invited individuals to participate in the process and share

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[34] SUJIT CHOUDHARY, MADHAV KHOSLA & PRATAP BHANU MEHTA, THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION (Oxford University Press 2016).
[35] ANURADHA DINGWANEY NEEDHAM & RAJESWARI SUNDER RAJAN, THE CRISIS OF SECULARISM IN INDIA (Duke University Press 2007)
[36] *The Constitution of India*, LEGISLATIVE.GOV (July 28, 2023, 5:30 PM), https://lddashboard.legislative.gov.in/sites/default/files/COI...pdf
[37] *Public Notice on, Uniform Civil Code*, LAW COMMISSION OF INDIA (July 29, 2023, 3:00 PM), https://lawcommissionofindia.nic.in/notice/uniform-civil-code-public-notice/

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perspectives on the UCC. They were given a window of 30 days, starting from the date of the notice, to submit their views to the Law Commission of India.

This re-examination of the UCC topic by the 22nd Law Commission is in response to a reference dated June 17, 2016, received from the Ministry of Law & Justice. The Commission is actively scrutinising the subject matter of the Uniform Civil Code, considering its significance and relevance, and considering various court orders related to the matter. It is worth noting that the 21st Law Commission of India had previously undertaken an examination of the Uniform Civil Code. They sought the input of all stakeholders through an appeal accompanied by a questionnaire dated October 7, 2016, followed by subsequent public appeals/notices on March 19, 2018, March 27, 2018, and April 10, 2018. The Commission received an overwhelming response from the public, which indicates the widespread interest and concern regarding this issue.

In light of the input received during the previous consultation phase, the 21st Law Commission published a consultation document titled *"Restructuring of Family Law"* on August 31, 2018. However, given the passage of more than three years since the issuance of the consultation paper, and considering the ongoing relevance and importance of the subject, as well as the developments in various court rulings related to the Uniform Civil Code, the 22nd Law Commission of India deemed it necessary to deliberate afresh on the matter. This renewed deliberation by the 22nd Law Commission signifies their commitment to examine the complexities surrounding the implementation of a Uniform Civil Code thoroughly and comprehensively. By actively seeking input from the public and religious organisations, the Commission aims to gather diverse perspectives and ensure a more inclusive decision-making process.

Therefore, the 22nd Law Commission of India's decision to re-engage with the public and religious organisations on the topic of the Uniform Civil Code reflects a responsible and democratic approach to addressing this contentious issue. The Commission's efforts to solicit views and ideas from various stakeholders will play a crucial role in shaping the future direction of the discussion and potential reforms related to the Uniform Civil Code in India.

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A landmark case shedding light on, the conflict between personal laws and Part III of the Indian Constitution has been a persistent dilemma,[38] in the *"State of Bombay v. Narasu Appa Mali"* [39] case, which involved the "Bombay Prohibition of Bigamous Marriage Act 1946." The validity of this Act was challenged based on Articles 14, 15, and 25 of the Constitution[40]. The court held that Personal laws are not included in the "law" mentioned in Article 13(3)[41] and are not the "law in force" referred to in Article 372(3)[42]. The Bombay Prohibition of Hindu Bigamous Marriage Act, 1946, was not found to be in violation of Article 14, as the State was free to bring in social reforms in stages. If religious practices oppose public order, morality, or social welfare, the State's duty is to prioritise the welfare of the people as a whole over religious practice.

Despite calls for a Uniform Civil Code (UCC), implementing it is challenging due to India's size, diversity, and complex societal issues. India's diverse personal laws have led to politicisation, making the prospect of a UCC seem unlikely. The concept of a UCC lacks a coherent understanding of what it would entail and what problems it would address. Even the Supreme Court's understanding of the UCC has shown some gaps, making the realisation of a UCC difficult.

The mention of a UCC first appeared in the Supreme Court's ruling in the *"Mohammed Ahmed Khan v. Shah Bano Begum and ors"*,[43] In this instance, the court requested that the government formulate a "Common Civil Code" to safeguard the diversity of the nation. However, subsequent cases and applications of laws have shown that unifying legislation has not been effective in achieving its intended objectives. For instance, the Special Marriage Act aimed to overcome customary disapproval of marriages but has not been widely utilised. Even the Hindu law, seen as an example of a UCC, lacks uniformity in some aspects of family law. The Portuguese Civil Procedure Code 1939, applicable to all communities in Goa, is not universally applied. Implementing the Uniform Civil Code (UCC) requires addressing concerns of minority religious groups to avoid loss of identity within Indian society. Successful implementation hinges on obtaining support and acceptance from all stakeholders and communities. Modern laws should be

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[38] Riya Puniyani, *Uniform Civil Code and Conflicts of Personal Laws*, SSRN (July 29, 2023, 5:00 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3643457
[39] State of Bombay v. Narasu Appa Mali, AIR 1952. Bombay 84
[40] INDIA CONST. arts. 14, 15 & 25
[41] INDIA CONST. art. 13(3)
[42] INDIA CONST. art. 372(3)
[43] Mohammed Ahmed Khan v. Shah Bano Begum and ors, 1985 SCC 556

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incorporated, and mobilising the opinions of Hindus, Muslims, Christians, and Parsis can yield positive results and reduce fundamentalist resistance.

6. CONCLUSION

Indian Constitution stands as a comprehensive and evolving document that lays the foundation for the governance of the country. While it may be complex and require regular amendments to address changing societal needs, its core institutional design is understandable and crucial to the functioning of the nation. The Constitution outlines procedural aspects of governance, the distribution of decision-making powers, and the protection of citizens' rights, making it a significant tool in shaping India's political landscape. Societal divisions and conflicts pose critical challenges for peace-building efforts, and constitutional design plays a pivotal role in addressing these issues. By restructuring the state to accommodate the demands of various regions, providing autonomy and equitable resource distribution, and safeguarding diverse cultures and languages, the Constitution can foster lasting peace and stability. While the Indian Constitution upholds values of liberty, equality, and justice, it can be further improved to explicitly address gender equality. Though certain provisions ensure equal protection under the law, the usage of masculine terms may hold symbolic implications for women's inclusion in the political community. It is vital to interpret the Constitution in a manner that ensures equal rights for both genders, combating patriarchal biases. The Uniform Civil Code remains a contentious topic in India, aiming to establish a common set of civil laws for all residents, transcending religious affiliations. While the idea is commendable in promoting unity and equality, it requires careful consideration and acceptance from all stakeholders and communities. Incorporating modern laws and garnering support from various religious groups can lead to fruitful results and reduce resistance.