



[Personal Law as a Theory of the Person: The Indian Women's Charter (1946) and the Mehta-Kaur Dissent on Articles 25 and 44]

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ABSTRACT

This article reconstructs the Indian Woman's Charter of Rights and Duties (1946) and the Fundamental Rights Sub-Committee interventions of Hansa Mehta and Rajkumari Amrit Kaur as a mid-century philosophy of legal personality. It argues that they treated religion-based personal law not as faith but as a theory of the person: the claim that a woman's civil status is derived from her community. An unqualified right to "practise" religion would have constitutionalised that claim. The transfer of the uniform civil code from justiciable rights to Directive Principles was therefore a defeat of a theory of the person, not only a legislative compromise. The Constitution accepted part of the argument in Articles 14, 15 and 25(2) and deferred the rest in Article 44.

keywords: intellectual history; Indian Constitution; personal law; Hansa Mehta; Rajkumari Amrit Kaur; Uniform Civil Code; legal personality; All India Women's Conference

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Introduction

In March 1947, as the Fundamental Rights Sub-Committee of the Constituent Assembly's Advisory Committee sorted justiciable from non-justiciable rights, two of its women members refused a formulation that would have left family law where the colonial state had put it: inside religion. Writing to B. N. Rau on 31 March, Rajkumari Amrit Kaur spoke also for Hansa Mehta. Customs practised "in the name of religion"—*pardah*, child marriage, polygamy, unequal inheritance, the prevention of inter-caste marriage, the dedication of girls to temples—must not be placed beyond the reach of future legislation by a clause guaranteeing the free *practice* of religion. They asked instead for freedom of conscience, worship, and profession.¹ Weeks later, with M. R. Masani, they recorded a further dissent: a uniform civil code should not remain an "ultimate social objective." Personal laws based on religion, they wrote, kept the nation in "watertight compartments in many aspects of life." The code should be guaranteed within five or ten years, on the model of free and compulsory primary education, and moved from the non-justiciable to the justiciable chapter.²

These interventions are now well known as facts of constitution-making. They are less often read as philosophy. This article argues that Mehta and Kaur did not merely endorse a Uniform Civil Code, nor merely append a "social reform" rider to religious freedom. They treated religion-based personal law as a *theory of the person*: the claim that a woman's civil status—marriage, divorce, inheritance, guardianship, property—is derived from her community rather than from her standing as an individual subject of rights. On that view, an unqualified constitutional right to practise religion would not protect belief. It would constitutionalise a juridical allocation of legal personality. The *Draft of Indian Woman's Charter of Rights and Duties*, prepared by the All India Women's Conference and submitted by Mehta to the United Nations Sub-Commission on the Status of Women in May 1946, is the theoretical text of that claim.³ The Sub-Committee letter, the minutes of dissent, and the later Assembly residue in what became Articles 25 and 44 are its legal form. The transfer of the uniform civil code from justiciable rights to Directive Principles was therefore a defeat of a philosophy of the person, not only a legislative compromise.

The argument is bounded. It does not treat Mehta and Kaur as inventors of feminism, nor as spokeswomen for "Indian women." They wrote from the All India Women's Conference (AIWC), an organisation whose leadership was urban, English-educated, and nationalist. Surbhi Karwa is right that a project of "founding mothers" cannot take radicality as a premise.⁴ The article takes that caution as a condition of reading, not as a reason not to read. It also refuses present tense. Nothing here is an argument for enacting Article 44 in the twenty-first century. Later feminist insistence that uniformity is not justice, reconstructed with care by Janaki Nair, is a different argument and must not be read back into 1946–49.⁵

Three academic literatures make the intervention necessary. The first recovers Indian women as thinkers. That recovery rarely reaches law. The second literature, opened decisively by Achyut Chetan's *Founding Mothers of the Indian Republic*, restores women members of the Constituent Assembly as authors: it reads the Constituent Assembly Debates together with AIWC

¹Rajkumari Amrit Kaur to B. N. Rau, 31 March 1947, in B. Shiva Rao, ed., *The Framing of India's Constitution: Select Documents*, vol. 2 (New Delhi: Indian Institute of Public Administration, 1967). Insert page number from this volume.

²Minutes of dissent by M. R. Masani, Hansa Mehta, and Rajkumari Amrit Kaur on the uniform civil code clause, Fundamental Rights Sub-Committee, March–April 1947, in Shiva Rao, *Select Documents*, 2:[p.].

³All India Women's Conference, *Draft of Indian Woman's Charter of Rights and Duties*, submitted by Hansa Mehta, UN doc. E/HR/ST/5 (1 May 1946); "Draft of the Indian Women's Charter of Rights and Duties," *Roshni: Journal of the All India Women's Conference* 1, no. 5 (June 1946).

⁴Surbhi Karwa, review of *Founding Mothers of the Indian Republic: Gender Politics of the Framing of the Constitution*, by Achyut Chetan, *Indian Law Review* 7, no. 3 (2023): 403–11.

⁵Janaki Nair, *Women and Colonial Law: A Feminist Social History* (Cambridge: Cambridge University Press, 2025), chapter on the uniform civil code.



paper, letters, and the 1946 Charter.⁶ Chetan's achievement is archival and political. What remains thinner is a conceptual reconstruction of *one* dissent—the theory of the person inside the Charter and the Kaur–Mehta notes. The third literature is the legal history of Article 44. Granville Austin long ago placed the uniform civil code among the Assembly's postponed social objectives.⁷ Recent work in the *Indian Law Review* has returned to the making of the clause with new precision.⁸ In much of this writing Mehta and Kaur appear as quotations in a longer story about secularism, minority consent, and national integration. Their own account of why personal law could not be left standing is treated as a preference rather than as an argument about legal personality.

Rajesh Kumar has shown that the Assembly's women opposed positive discrimination by sex and sought the removal of socio-religious constraints upon women as a condition of equality.⁹ Alisha Dhingra has mapped the gender discourses of constitution-making.¹⁰ Tobias Berger has placed Mehta between the Assembly and the United Nations Commission on Human Rights, where she objected to “all men” as the subject of the draft Universal Declaration.¹¹ These studies establish the cast and the circuits. They do not yet ask what concept of the person made it necessary, in the same months, to narrow Article 25, to justiciabilise a civil code, and to refuse reserved seats for women.

The method is intellectual history. The unit of analysis is not a life but a set of documents: the Charter (UN E/HR/ST/5 and the June 1946 Roshni text), the letter of 31 March 1947, the Masani–Mehta–Kaur minutes of dissent in B. Shiva Rao's Select Documents, and the constitutional text that remained. Concepts are reconstructed from wording: person, community, religion, civil status, justiciability. Where Chetan or Kumar have already established who signed and who voted, the article cites them and interprets. Where the Assembly majority spoke of national unity and Mehta–Kaur spoke of a woman's civil status, the two registers are kept distinct.

The article proceeds in four moves. Section II reads the Charter as a theory of the person. Section III reads the letter to Rau as a distinction between religion as conscience and personal law as the allocation of legal personality. Section IV asks why justiciability of a uniform code followed from that distinction, and how the rejection of sex-based reservation belongs to the same theory. Section V maps what the Constitution accepted and what it deferred: a split theory of the person, public and familial.

II. The Charter as a Theory of the Person

The Charter was not a petition for protection. It was a draft constitution for one half of the future citizenry, written before the Assembly had produced a text. Conceptualised in the AIWC leadership and introduced at the eighteenth annual session at Hyderabad in 1945, it was published in *Roshni* in June 1946 and submitted to the UN Sub-Commission as E/HR/ST/5, signed in that form by Mehta.¹² Chetan and the documentary record treat Rajkumari Amrit Kaur, Hansa Mehta, and Lakshmi Menon as the names under the Charter; Kamaladevi Chattopadhyay, Renuka Ray, Kitty Shiva Rao, and Hannah Sen appear with the

⁶Achyut Chetan, *Founding Mothers of the Indian Republic: Gender Politics of the Framing of the Constitution* (Cambridge: Cambridge University Press, 2022).

⁷Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966).

⁸“Debating Uniform Civil Code: The Making of Article 44 in the Constituent Assembly of India,” *Indian Law Review* 9, no. 3 (2025): 341–66.

⁹Rajesh Kumar, “Equality for Women: The Constituent Assembly Debates and the Making of Equality Jurisprudence by and for Women,” *Social Change* 52, no. 1 (2022): 58–75.

¹⁰Alisha Dhingra, “Gender Discourses and the Making of the Indian Constitution,” *Indian Journal of Gender Studies* 29, no. 1 (2022): 33–54.

¹¹Tobias Berger, “Worldmaking from the Margins: Interactions between Domestic and International Ordering in Mid-Twentieth-Century India,” *European Journal of International Relations* 28, no. 4 (2022): 836–61.



companion memorandum on planning for national welfare.¹³ The document's force for this article is not organisational genealogy. It is the unit of justice it names.

The preamble of the UN text states the unit without metaphor: freedom and equality are essential to human development; "woman is as much a human being as man and, therefore, entitled to share them with him."¹⁴ A parallel formulation, preserved in later printings of Mehta's AIWC work, grounds social progress in the extent to which "both men and women are able to develop their full personality and are cognizant of their responsibilities to themselves and to each other."¹⁵ Two philosophical moves are packed into these sentences. First, "human being" is not a courtesy title for women. It is the genus of the rights-bearer. Second, personality is something to be *developed*, not a status conferred by marriage, guardianship, or community membership. The Charter's later pairing of rights with duties follows from that second move. Duties-toward children, toward a public standard of morality, toward peace-are obligations of a developed person, not the residual honours of a ward.

The section on fundamental rights translates the preamble into civic status. All citizens are equal before the law, "irrespective of caste, creed or sex." No disability attaches to any citizen by reason of religion, caste, creed, or sex in public employment, office, or the exercise of a trade or calling.¹⁶ The formula is close to what became Articles 14 and 15, and closer still to the Karachi Resolution's language on fundamental rights, which the Charter's drafters knew and reused. What matters here is the work "citizen" is made to do. Caste, creed, and sex appear as illegitimate grounds of disability, not as the sources from which legal capacity flows. A woman does not enter the law as a Hindu daughter, a Muslim wife, or a Christian widow. She enters as a citizen who happens to have a sex, a creed, and a caste location.

Civic rights in the Charter include equal franchise, equal eligibility for public office, and the refusal of a separate electoral or reserved track for women as women. That refusal is not an incidental tactic of the 1930s women's organisations, though it had that history. Geraldine Forbes and Mrinalini Sinha have shown how the AIWC and allied bodies, after the controversies of the 1920s and 1930s, came to treat reserved seats for women as a trap: a communalisation of sex that would bind women to the logic of group representation the same organisations opposed for religious minorities.¹⁷ In the Charter the refusal is conceptual. If the person is the unit, sex cannot be the basis of a separate civic status, even a protective one. Kumar's reading of the Assembly women-opposition to positive discrimination by sex, faith that the removal of constraint would allow merit to operate-is already written into the 1946 text.¹⁸ The Charter wants the disabilities removed and the field equal. It does not want women constituted as a minority.

The sections on property, marriage, and the family are where the theory of the person meets personal law. The Charter demands equal property and inheritance rights and a marriage law that does not leave capacity, age, monogamy, and exit to the internal norm of a religious community.¹⁹ Minimum ages and the equalisation of marital status are not presented as concessions extracted from *śāstra* or *fiqh*. They are presented as incidents of civic equality. Family, in this drafting, is a site of civil status. It is not a sacrament the state may only bless. Tanika Sarkar and Nandini Chatterjee have shown how colonial "personal law" was assembled as a legal technology: a sphere in which the Company and the Crown recognised community, scripture, and

¹⁵Hansa Mehta, *Indian Woman* (New Delhi: Butala, 1981).

¹⁷Geraldine Forbes, *Women in Modern India* (Cambridge: Cambridge University Press, 1996); Mrinalini Sinha, *Specters of Mother India: The Global Restructuring of an Empire* (Durham, NC: Duke University Press, 2006).



custom as the proper sources of family norms, and thereby made religion the container of women's civil capacity.²⁰ The Charter does not use that historiography. It performs its conclusion. If woman is a human being and a citizen, the family cannot remain the one department of life in which her personality is derived from a communal code.

Two qualifications keep the reading honest. First, the Charter is a document of a particular feminism. It speaks the language of personality, citizenship, education, health, and work. It does not theorise caste labour, agrarian property, or the Muslim woman as a distinct legal subject except insofar as "creed" is listed among illegitimate disabilities. Flavia Agnes and Archana Parashar have long warned that a uniform code imagined from this location can flatten the very differences through which poor and minority women actually encounter law.²¹ That warning is later. In 1946 the Charter's silence is real and should be named. Second, the document pairs rights with duties in a register that later rights theory would find paternal. Woman as homemaker is still a heading. The duties include the upbringing of children as good citizens and the maintenance of a "high standard of morality." The pairing is not a retraction of the preamble. It is an attempt to describe the person as both claimant and obligor—an attempt visible, in another key, in Mehta's later insistence that a democratic state cannot "keep half the number of its citizens uneducated."²² Personality, in this idiom, is civic. It is not the unencumbered individual of a later liberalism. Charles Beitz's vocabulary of the person as the subject of human rights is useful only as a contrast: the Charter's person is already social, already tasked.²³ What she is not is a legal dependent of a religious community.

Mehta's own essays in *Indian Woman* (1981) restated the same architecture without adding a new metaphysics.²⁴ Education is a condition of democratic citizenship; equality of status must include equality of opportunity; the uneducated woman is a problem for the state, not only for the household. The essays are continuous with the Charter. They are not a substitute for it. The Charter remains the text in which the person is defined before the Assembly wrote Articles 14, 15, 25, and 44.

III. Personal Law as Encoded Philosophy, Not "Religion"

The letter of 31 March 1947 is the Charter's translation into constitutional grammar. Kaur wrote to Rau that she and Mehta had gone over the draft report of the Fundamental Rights Sub-Committee and were agreed. They recorded their vote against compulsory service. They then turned to the religious-freedom clause. "There are several customs practised in the name of religion e.g., pardah, child marriage, polygamy, unequal laws of inheritance, prevention of inter-caste marriages, dedication of girls to temples." No clause of a fundamental right should "make impossible future legislation for the purpose of wiping out these evils." The amendment they proposed was exact: "Freedom of conscience, freedom of religious worship and the free profession of religion subject to public order, morality or health and to the other provisions of this chapter are guaranteed to every citizen."²⁵

The list is not a random catalogue of social evils. It is a map of the points at which "religion," in the colonial and nationalist legal sense, allocated women's legal personality. *Pardah* governed movement and public presence. Child marriage governed the age at which a girl could become a wife and so a legal minor twice over. Polygamy governed the terms of conjugality. Unequal inheritance governed property. The ban on inter-caste marriage governed the reproduction of community. Dedication

²⁰Tanika Sarkar, *Religion and Women in India: Gender, Faith, and Politics, 1780s–1980s* (Ranikhet: Permanent Black, 2024); Nandini Chatterjee, *The Making of Indian Secularism: Empire, Law and Christianity, 1830–1960* (Basingstoke: Palgrave Macmillan, 2011).

²¹Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (New Delhi: Oxford University Press, 1999); Archana Parashar, *Women and Family Law Reform in India* (New Delhi: Sage, 1992).

²³Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009).



to temples governed the extraction of girls from ordinary civil status into a religious vocation that the law had already begun to treat as a problem of traffic and custom. Each item is a rule about who a woman *is* before the law. To call these “practice of religion” would be to give them the same constitutional dignity as worship.

The philosophical distinction the letter draws is therefore not between religion and reform, the pairing in which Austin and much subsequent constitutional history have placed it. Austin’s *Cornerstone* remains indispensable on the Assembly’s mechanics and on the Congress as the Assembly’s political culture. It treats the women members, when it notices them, as “ladies,” and it treats limits on religious practice as the social-reform exception that a modernising state requires.²⁶ Madhav Khosla’s *India’s Founding Moment* has given that state a sharper intellectual history: constitution as the pedagogy of a new democratic people.²⁷ Neither book asks what theory of the subject is presupposed when “practice” is the word that must be struck. Mehta and Kaur were not asking the state for permission to improve women. They were asking the Constitution not to *recognise* a particular account of who women are.

That account had a colonial pedigree. Chatterjee has shown how Indian secularism was assembled through the imperial management of Christian and other personal statuses.²⁸ Newbigin has shown how the Hindu family became a legal object through which citizenship and community were jointly produced.²⁹ Sarkar has argued that personal law was never a quiet residual of faith; it was a political technology through which community was made and women were placed.³⁰ Mehta and Kaur did not cite this scholarship. They inhabited its conclusion. If religion is conscience, worship, and profession, it is an interior and ritual relation. If religion is “practice” in the sense that includes marriage and inheritance, it is a public law of persons administered by community. The second is what they refused to entrench.

The Sub-Committee did not give them the clause they wrote. The text that became Article 25 guarantees freedom of conscience and the right “freely to profess, practise and propagate religion,” subject to public order, morality, and health, and subject to the state’s power to regulate secular activity associated with religion and to provide for social welfare and reform, including temple entry.³¹ “Practise” remained. So did “propagate.” What they won was the limitation: morality, health, public order, and the explicit reform power in what is now Article 25(2). The letter’s list would have to live, if it lived at all, under that limitation and under ordinary legislation, not under a clause that had already defined religion as worship only. The partial victory matters. It shows that the Assembly accepted the *possibility* of reform. It did not accept the *redefinition* of religion that would have made personal law conceptually ineligible for constitutional protection.

Sandipto Dasgupta’s question-how a mass anticolonial movement is legalised, and what is lost in the translation-is useful here if kept in its place.³² The Charter and the letter are themselves already law-minded documents. They do not speak in the register of satyagraha or of peasant insurgency. They speak in the register of clauses. What is translated is not the revolution as such but a pre-constitutional theory of the person into the only form the Assembly would recognise: a fundamental right and its exceptions. The loss is visible in the word that survived. “Practise” kept open the argument Mehta and Kaur had tried to close: that family law might still be religion.

²⁷Madhav Khosla, *India’s Founding Moment: The Constitution of a Most Surprising Democracy* (Cambridge, MA: Harvard University Press, 2020).

²⁹Eleanor Newbigin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (Cambridge: Cambridge University Press, 2013).

³¹Constitution of India, arts. 14, 15, 15(3), 25, 25(2), 44.

³²Sandipto Dasgupta, *Legalizing the Revolution: India and the Constitution of the Postcolony* (Cambridge: Cambridge University Press, 2024).



IV. The UCC Dissent: Why Justiciability Followed from the Theory

If personal law is a theory of the person, a non-justiciable hope that the state will “endeavour” to write a common code is not a mild delay. It is permission for the rejected theory to continue as law. That is why Mehta, Kaur, and Masani dissented from the Sub-Committee’s decision to place the uniform civil code among non-justiciable rights.

The wording, preserved in Shiva Rao, should be read slowly.³³

We are not satisfied with the acceptance of a uniform civil code as an ultimate social objective set out in clause 41 as determined by the majority of the sub-committee. One of the factors that has kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life. We are of the view that a uniform civil code should be guaranteed to the Indian people within a period of 5 or 10 years in the same manner as the right to free and compulsory primary education has been guaranteed by clause 24 within 10 years. We, therefore, suggest that the Advisory Committee might transfer the clause regarding a uniform civil code from chapter 2 to chapter 1 after making suitable modifications in it.

“Watertight compartments” is the sentence most often quoted, and most often flattened into a nationalist complaint. Nationhood is in the sentence. So is “many aspects of life.” The compartments are not only Hindu and Muslim electorates. They are the legal lives in which marriage, property, and guardianship run on separate tracks. A person who is one citizen in the polling booth and another legal being in the family court is the problem the dissent names. The analogy with primary education is equally conceptual. Education had been treated as a time-bound, legally stipulated obligation of the state because the person of the future citizen required it. A civil code, on this analogy, is not a cultural preference. It is a condition of a single legal personality. Five or ten years is not a metaphor. It is the form in which they thought a philosophy could be made justiciable without pretending that the code already existed.

They lost in the Sub-Committee. The majority would not treat the code as a fundamental right. After Partition, Masani, Mehta, and Kaur wrote again, in July 1947, asking the Advisory Committee to reconsider in light of the “keen desire that is now felt for a more homogeneous and closely knit Indian nation.”³⁴ The second letter is the weaker text. It leans on homogeneity after a communal catastrophe. An honest reading must not pretend that the July letter is identical with the March dissent. The March text argues from compartments in the life of the law. The July text argues also from the wound of Partition. Both exist. The philosophy this article reconstructs lives more cleanly in March.

The Assembly debate of 23 November 1948 on draft Article 35 (now 44) was not their debate in the first instance. Mohammad Ismail Sahib and others moved provisos that no community should be obliged to give up its personal law. K. M. Munshi answered that even Hindus lived under several systems, and that if personal law were religion one could never legislate equality for women. B. R. Ambedkar defended the clause as enabling, not compelling, and as consistent with a state that already reformed Hindu and other practices.³⁵ These are the speeches around which legal histories of Article 44 are now written.³⁶ Mehta’s own later statement of the position—that a common civil code was “much more important than even the national language,” that “the Indian woman should have the same civil status irrespective of the community to which she belongs,” and

³⁴Chetan, *Founding Mothers*. On the July 1947 reconsideration letter, see also “Debating Uniform Civil Code,” *Indian Law Review* 9, no. 3 (2025).

³⁵*Constituent Assembly Debates*, Official Report, vol. 7 (New Delhi: Lok Sabha Secretariat), 23 November 1948 (draft Art. 35). Insert column/page from the official reprint.



that the code must be “on a par with, or in advance of, the most progressive of the personal laws”-belongs to the same family as the March dissent and must not be collapsed into Munshi’s inventory of Hindu systems or into Ambedkar’s defence of legislative competence.³⁷

The differences are philosophical. Munshi’s argument is comparative internal pluralism: Hindus are already several, so religious integrity cannot bar a code. Ambedkar’s argument, in the Assembly, is sovereignty and time: the state may make a code; it need not make one at once; communities need not be marched into it. Mehta and Kaur’s argument is about the subject. The woman is to have “the same civil status irrespective of the community to which she belongs.” Community remains a fact of belonging. It ceases to be the source of legal personality. The standard they named-“on a par with, or in advance of, the most progressive of the personal laws”-is also a standard of content, not of sameness as such. Nair’s later point, that uniformity and gender justice are not identical, is anticipated here only in this limited sense: they did not ask for the lowest common denominator of existing codes.³⁸ They asked for a code measured against the most egalitarian civil status already available. That is still not Nair’s argument. It is theirs.

The same theory explains the refusal of reserved seats for women. Kumar and Chetan have established the fact.³⁹ The Assembly’s women, with few exceptions, would not have women enter legislatures as a scheduled sex. Ammu Swaminathan’s insistence on merit and universal franchise is of a piece with the Charter’s civic rights. If the person is the unit, sex-reservation would reconstitute women as a communal category-the very operation personal law performs in the family. There is a cost, and it should be stated. A feminism that refuses group rights of sex while the structure of personal law remains standing asks women to compete as individuals in the public sphere while remaining dependents in the private one. That is not a contradiction the 1946–49 texts resolve. It is the split the next section describes. Karwa’s question-whether the AIWC elite can be called radical without examination-has its bite here.⁴⁰ The refusal of reservation was a theory of the person. It was also a theory available to women who expected to win seats without a quota.

Berger’s placement of Mehta at the UN Commission on Human Rights supplies a parallel, not a second article.⁴¹ Johannes Morsink records the objection to “all men are born free and equal” and the adoption of “all human beings.”⁴² The parallel is the subject of the sentence. A declaration that names “men” repeats, at the international level, the gesture personal law performs domestically: it treats the male person as the default legal being. Mehta’s correction does not make the Charter a human-rights document in Beitz’s sense. It shows that the same writer was arguing, in two forums, about who counts as the bearer of rights.

V. What Was Constitutionalised, What Was Deferred

The Constitution did not reject the Mehta–Kaur theory. It split it.

What was accepted is visible in Part III. Article 14 names the person as the subject of equality before the law and equal protection. Article 15 prohibits discrimination on grounds only of religion, race, caste, sex, or place of birth, and Article 15(3) permits special provision for women and children-an opening Chetan reads as the recognition of social disability rather than of biological difference.⁴³ Article 25 guarantees conscience and the profession, practice, and propagation of religion, but it does

³⁹Kumar, “Equality for Women”; Chetan, *Founding Mothers*.

⁴²Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), 118.



so under limitation and under Article 25(2), which saves laws regulating secular activity associated with religion and laws providing for social welfare and reform.⁴⁴ The letter of 31 March 1947 is in that limitation, even though “practise” survived. The state may reach the list Kaur and Mehta named. It is not constitutionally forbidden to wipe out those “evils.” It is not constitutionally *required* to treat them as non-religion.

What was deferred is equally visible. Personal law was not abolished. A uniform civil code was not made a right. Draft Article 35 became Article 44: “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”⁴⁵ Endeavour is not a duty a court could then enforce. The person of Articles 14 and 15 is a public person. The person of marriage, divorce, and inheritance remained, pending legislation, a communal person. Newbigin’s Hindu family and Agnes’s map of gender inequality under personal law describe the legal world that this deferral left standing.⁴⁶ The Hindu Code debates of the 1950s, which Nair has placed in a long feminist social history of colonial and postcolonial law, were the first major attempt to legislate part of what the Charter had demanded-and only for one community.⁴⁷ That sequel is outside this article’s frame. It is the proof that deferral was not a form of words.

The right name for this outcome is not hypocrisy. The Assembly was writing after Partition, under the pressure of minority fear, in a body that had already decided that religion would have a public constitutional life. Khosla’s founding moment is a moment of pedagogic statehood, not of philosophical purity.⁴⁸ Dasgupta’s legalisation of revolution is a reminder that clauses are where movements go to lose their excess.⁴⁹ Mehta and Kaur were themselves clause-writers. They lost a clause. What remains is a Constitution that speaks two theories of the person at once: the citizen who is equal without regard to sex or creed, and the family member whose creed still writes her civil status. Article 25(2) is the hinge between them. Article 44 is the unfinished sentence.

Dhingra’s study of gender discourses in the making of the Constitution and Kumar’s account of equality jurisprudence by and for women both describe women members as seeking the removal of constraint rather than the creation of a protected class.⁵⁰ That description fits the split. Removal of constraint in the public sphere was written as right. Removal of constraint in the family was written as endeavour. The Charter had not accepted that distinction. The Constitution did.

VI. Conclusion

The contribution of this article is limited and specific. Chetan restored women constitution-makers as authors and placed the Charter and the AIWC paper in the archive of the founding.⁵¹ The 2025 *Indian Law Review* account of Article 44 restored the committee-stage conflict over justiciability, including the Masani–Mehta–Kaur dissent, to legal history.⁵² Neither project, nor



Austin's earlier narrative, reconstructs the dissent as a philosophy of legal personality. That reconstruction is what the Charter and the letter of 31 March 1947 will bear.

The Charter names woman as a human being and a citizen whose personality is to be developed, not derived. Its fundamental and civic rights refuse caste, creed, and sex as sources of legal disability and refuse sex as a basis of separate civic status. Its family and property clauses treat marriage and inheritance as civil status. The letter to Rau translates that theory into a definition of religion: conscience, worship, profession-not a practice that includes pardah, child marriage, polygamy, unequal inheritance, endogamy, and dedication. The UCC dissent follows. If legal personality is not to remain compartmentalised by religion, a common civil status cannot be an ultimate objective. It must be a time-bound guarantee. The refusal of reserved seats for women belongs to the same architecture: sex is not a community.

What the Constitution enacted was a split theory of the person. Equality and non-discrimination in the public sphere, plus a reform power over religious practice, accepted part of the argument. The survival of personal law and the demotion of the civil code to Article 44 refused the rest. Later feminist scepticism that uniformity is not justice should not be written into 1946. Mehta and Kaur asked for a code measured against the most progressive civil status available, and they asked for it as a right. Whether that demand was adequate to Muslim, Dalit, or agrarian women is a question their documents do not answer. It is a question intellectual history can name without forcing them to answer it.

The implication for the history of ideas is modest. Women's constitutional thought in India is not only a history of mobilisation, representation, and recovery. It is a history of concepts. Person, community, religion, and civil status were argued, in 1946 and 1947, in sentences that still repay a philosophical reading. The Charter and the dissent are two of those sentences.



Bibliography

1. Agnes, Flavia. *Law and Gender Inequality: The Politics of Women's Rights in India*. New Delhi: Oxford University Press, 1999.
2. All India Women's Conference. *Draft of Indian Woman's Charter of Rights and Duties*. Submitted by Hansa Mehta. UN doc. E/HR/ST/5. 1 May 1946.
3. Austin, Granville. *The Indian Constitution: Cornerstone of a Nation*. Oxford: Clarendon Press, 1966.
4. Beitz, Charles. *The Idea of Human Rights*. Oxford: Oxford University Press, 2009.
5. Berger, Tobias. "Worldmaking from the Margins: Interactions between Domestic and International Ordering in Mid-Twentieth-Century India." *European Journal of International Relations* 28, no. 4 (2022): 836–61.
6. Chatterjee, Nandini. *The Making of Indian Secularism: Empire, Law and Christianity, 1830–1960*. Basingstoke: Palgrave Macmillan, 2011.
7. Chetan, Achyut. *Founding Mothers of the Indian Republic: Gender Politics of the Framing of the Constitution*. Cambridge: Cambridge University Press, 2022.
8. *Constituent Assembly Debates*. Official Report. New Delhi: Lok Sabha Secretariat.
9. Dasgupta, Sandipto. *Legalizing the Revolution: India and the Constitution of the Postcolony*. Cambridge: Cambridge University Press, 2024.
10. "Debating Uniform Civil Code: The Making of Article 44 in the Constituent Assembly of India." *Indian Law Review* 9, no. 3 (2025): 341–66.
11. Dhingra, Alisha. "Gender Discourses and the Making of the Indian Constitution." *Indian Journal of Gender Studies* 29, no. 1 (2022): 33–54.
12. "Draft of the Indian Women's Charter of Rights and Duties." *Roshni: Journal of the All India Women's Conference* 1, no. 5 (June 1946).
13. Forbes, Geraldine. *Women in Modern India*. Cambridge: Cambridge University Press, 1996.
14. Karwa, Surbhi. Review of *Founding Mothers of the Indian Republic*, by Achyut Chetan. *Indian Law Review* 7, no. 3 (2023): 403–11.
15. Khosla, Madhav. *India's Founding Moment: The Constitution of a Most Surprising Democracy*. Cambridge, MA: Harvard University Press, 2020.
16. Kumar, Rajesh. "Equality for Women: The Constituent Assembly Debates and the Making of Equality Jurisprudence by and for Women." *Social Change* 52, no. 1 (2022): 58–75.
17. Mehta, Hansa. *Indian Woman*. New Delhi: Butala, 1981.
18. Morsink, Johannes. *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. Philadelphia: University of Pennsylvania Press, 1999.
19. Nair, Janaki. *Women and Colonial Law: A Feminist Social History*. Cambridge: Cambridge University Press, 2025.
20. Newbigin, Eleanor. *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community*. Cambridge: Cambridge University Press, 2013.
21. Parashar, Archana. *Women and Family Law Reform in India*. New Delhi: Sage, 1992.
22. Sarkar, Tanika. *Religion and Women in India: Gender, Faith, and Politics, 1780s–1980s*. Ranikhet: Permanent Black, 2024.
23. Shiva Rao, B., ed. *The Framing of India's Constitution: Select Documents*. 5 vols. New Delhi: Indian Institute of Public Administration, 1966–68.
24. Sinha, Mrinalini. *Specters of Mother India: The Global Restructuring of an Empire*. Durham, NC: Duke University Press, 2006.