

# Uniform Civil Code and the Constitution of India

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**ABSTRACT-** The Indian Constitution's Directive Principles of State Policy are outlined in Part IV. However these standards are rules and are not enforceable in that frame of mind of regulation anyway they are crucial in the administration of the country. Article 44 of the Constitution, which mandates the state to enact a uniform civil code, provides one such directive principle. Different headings have been given by the Zenith Court for its execution notwithstanding, because of exorbitant politicization in our country it is as yet a far off dream. Personal matters like marriage, divorce, and adoption are not governed by a single body of law. Different individual regulations are relevant to various strict networks who dwell in our country. These regulations find their source and authority in their strict texts and customs which accommodates orientation prejudicial practices in all structures and frequently is one-sided towards guys than that of females. This paper targets accomplishing a harmony between Right to Opportunity of Religion and Right to Correspondence by isolating the 'fundamental strict practices' and 'mainstream exercises'. In this manner one can say that the need of great importance is to sanction a Uniform Common Code however that should be done gradually and continuously in the wake of making individuals particularly the minorities, mindful about its degree and degree as well as their freedoms.

**KEYWORDS-** Uniform Civil Code, Constitution, State Policy

## I. INTRODUCTION

Uniform common code follows its starting point from the idea of a common regulation code. It conceives controlling similar arrangement of mainstream common regulations to oversee various individuals having a place with various religions and locales. Citizens' right to be subject to different personal laws based on their religion or ethnicity is overruled by this. Personal status, property acquisition and administration rights, marriage, divorce, and adoption are among the common areas covered by a civil code [1].

Because India is a diverse nation with a lot of religious and social differences, it is critical to have a uniform civil code as soon as possible to close the gap left by individual laws that have crept in over time. A uniform law of this kind is necessary for a number of reasons, including the promotion of legal uniformity and the reconciliation of the unintentional discrimination that

personal law causes among citizens by recognizing the diversity of our nation.

The constitution has an arrangement for Uniform Common Code under Article 44 as a Mandate Rule of State Strategy which expresses that "The State will try to get for the residents a uniform common code all through the domain of India. "ii Because it was included in the Directive Principles—which are merely guidelines that cannot be enforced—it has not yet been implemented, and such cases of paper protection are not sufficient grounds to move the Court of Law[2].

The Uniform Common Code is excluded from Basic Freedoms, however in postmodern India, speedy footed thinking about this sort has now brought about very much considered creation of a perfect representation of the ideal object of the uniform common code as blended individual regulation framework. The idea behind the demand for a unified civil code is to combine all of these individual laws into a single set of secular laws that cover these topics and are applicable to all Indian citizens, regardless of their community of origin. The main points of contention regarding the Uniform Civil Code have been secularism and the freedom of religion enumerated in the Indian Constitution. Although the specific foundation on which such a uniform code is to be constructed has not yet been established, it is reasonable to assume that it will incorporate the most cutting-edge and forward-thinking aspects of all personal laws that are currently in place while eliminating those that are outdated. iii The prelude of the Constitution expresses that India is a Common Vote based Republic and consequently it implies that the State embraces no particular religion. A mainstream State is one which will not oppress anybody on the ground of religion. It implies that religion shouldn't impede the existence of a person. The Indian Constitution contains articles commanding equity and nondiscrimination on the grounds of sex (Articles 14-18). In any case, a few regulations exist that evidently disregard these standards and keep on being there particularly in private laws of specific networks which contain arrangements that are considered to be exceptionally oppressive against ladies [3].

Gender equality is explicitly supported by the Indian Constitution. However, the goal of a uniform civil code has not yet been achieved even half a century after the Constitution was written. Women, who make up nearly half of India, continue to demand a gender-neutral code so that they can enjoy equality and justice regardless of their community. The Uniform Common Code is

subsequently required not exclusively to guarantee (a) consistency of regulations between networks, yet in

addition (b) consistency of regulations inside networks guaranteeing correspondences between the privileges of people.[4]

It is neither time-bound nor conveys an enthusiastic earnestness. In any case, the Hindu fundamentalists make it an assailant request that the Hindu regulation ought to be made the public family regulation. There is worry in the psyche of the Muslim minority that the Quran' is at serious risk, that its hallowed family regulation will be ineffectual assuming the previous is brought into force. The delay in developing a uniform civil code, which was regarded as a secular necessity, has frequently irked the Supreme Court. Seething contention requesting the uniform code followed and was opposed in full wrath by the Muslim minority, with recognized special cases at whatever point an endeavor had been made at ordering of such a code.

Endeavors have been produced using time to time for ordering a Uniform Common Code after freedom and the High Court in different cases has been giving bearings to the public authority for executing Article 44 of the Constitution and to change the individual regulations exceptionally those connecting with the minorities and to eliminate orientation predisposition as well as regulations that disgrace ladies in that. While a uniform common code isn't especially high on the public plan, esteem based moderate changes, saving the different personality of every strict gathering, is a practical venture staying away from affront and injury to any minority. This might be a fundamental stage to make ready for a typical code. It is certain that mobilizing Muslim, Christian, and Parsi opinion in this direction will result in outcomes and lessen fundamentalist resistance throughout the nation. Perhaps, to work with a public discussion, a facultative normal code might be drawn up at a non-legislative level and that it will be simply discretionary for minorities to acknowledge or dismiss those arrangements [5].

At first Uniform Common Code was brought up in the Constituent Gathering in 1947 and it was consolidated as one of the order standards of the State strategy by the sub-council on Key Freedoms and condition 39 of the draft mandate standards of the state strategy given that the State will try to get for the resident a Uniform Common Code. Arguments were made that India's progress was hampered by a variety of religiously-based personal laws, and it was suggested that a uniform civil code should be enacted as soon as possible to help the newly independent nation develop. Since the Uniform Common Code was a politically touchy issue, the initial architects of the Constitution showed up at a split the difference by putting it under Article 44 as an order rule of state strategy.

## II. JUDICIAL MARCH THROUGH THE YEARS

The Legal executive through its different decisions consistently has consistently maintained orientation equity in cases relating to the Uniform Common Code.

On account of Mohammad Ahmed Khan v. Shah Bano Begum (1985) 2 SCC 556 prominently known as Shah

Bano case, that's what the High Court held "likewise a question of disappointment Article 44 of our Constitution

has stayed a lost cause. "Despite the fact that Muslim Fundamentalists strongly opposed this decision, it was regarded as a liberal interpretation of the law in accordance with gender justice. Later on, under tension from Muslim Fundamentalists, the focal Government passed the Muslim Ladies' (Security of privileges on Separation) Act 1986, which kept right from getting upkeep to Muslim ladies under segment 125 Cr. P.C. The lobbyist properly impugned that it "was without a doubt a retrograde step. That also demonstrated that women's rights are of little importance to India's secular state. Independence of a strict foundation was hence made to beat ladies' freedoms."

In Sarla Mudgal (Smt.), President, Kalyani and others v. Association of India and Others AIR 1995 SC 1531 the Summit Court while conveying the judgment guided the Public authority to execute the order of Article 44 and to document sworn statement showing the means taken regarding this situation and held that, "Progressive legislatures have been entirely neglectful in their obligation of carrying out the Sacred command under Article 44, Consequently the High Court mentioned the Public authority of India, through the State leader of the country to have a new gander at Article 44 of the Constitution of India and try to get for its residents a uniform common code all through the domain of India."

A PIL, on the other hand, was filed in Ahmadabad Women's Action Group (AWAG) v. Union of India, AIR 1997 SC 3614, challenging gender discriminatory provisions in Hindu, Muslim, and Christian statutory and non-statutory law. For this situation the High Court turned into a piece saved and held that the question of evacuation of orientation separation in private regulations includes issues of State polices with which the court won't usually have any worry. The choice was reprimanded that the peak court played basically relinquished its part as a sentinel in safeguarding the standards of correspondence in regards to orientation related issues of individual laws of different networks in India.[5]

The Zenith Court sought after a similar line in Lily Thomas and so forth. In Union of India and Others v. AIR 2000 SC 1650, the court ruled that the Uniform Civil Code is highly desirable. However, it can concretize just when social environment is appropriately developed by the general public, legislators among pioneers who as opposed to acquiring individual mileage transcend and stir the majority to acknowledge the change to improve the country overall.

In India, things were different when it came to Christians' personal laws. For their situation, the courts appeared to be bolder and took an ever-evolving stand with regards to orientation uniformity. For example, in the case of Swapana Ghosh v. Sadananda Ghosh, AIR 1989 Cal. 1 the Calcutta High Court communicated the view that areas 10 and 17 of the Indian Separation Act, 1869, ought to be announced illegal yet nothing occurred till 1995. Again in one more case, the Kerela High Court in Ammini E.J. v. Association of India AIR 1995 Ker.252 and Bombay High Court in Pragati Verghese v. Cyrill George Verghese AIR 1997 Bom. 349 have completely

struck down the segment 10 of Indian Separation Act, 1869 as being violative of orientation balance.

Julekhabhai, a poor Muslim woman, filed a lawsuit in September 2001 to amend Muslim law regarding polygamy and divorce. The High Court requested that she approach the Parliament, who would not engage the appeal. Julekhabhai had looked for correspondence with Muslim men, mentioning court to proclaim that "disintegration of marriage under Muslim Marriage Act, 1939, can be conjured similarly by one or the other mate". It additionally mentioned the court to strike down arrangements connecting with "talaq, ıla, zihar, lian, khula and so on", which permitted extra-legal separation in Muslim individual regulation [8,10]

Mohammed Abdul Rahim Quraishi, the then Secretary of All India Muslim Individual Regulation Board said that it should be seen that the subjects relating to that of marriage and separation, babies and minors, wills, intestacy and progression, parcel and so forth, are identified in the simultaneous rundown of seventh Timetable of the Constitution and these being simultaneous subjects both the focal and state legislatures have the ability to make regulations. Consequently, the Hindu Laws are influenced by numerous regional variations by state legislatures. In all communities covered by the I.P.C., bigamy is punishable, with the exception of Muslims, who are governed by Sharia law. The Muslim Individual Regulation (Shariat) Application Act 1937 was passed by the English government to guarantee that the Muslims were protected from precedent-based regulation and that main their own regulation would be relevant to them. Christians (Act XV of 1872), Parsis (Act II of 1936), and Hindus, Buddhists, Sikhs, and Jains (Act XXV of 1955) all prohibit bigamous marriages. Order of a Uniform Common Code would nullify the Muslim freedoms to polygamy. Women have consistently been the targets of torture under the guise of religious immunity in almost all recent cases that have emphasized the need for a uniform civil code, resulting in irreparable harm and loss. In addition to the well-known cases of Shah Bano (1986) and Sarla Mudgal (1995), numerous other Hindu wives whose husbands converted to Islam only wanted to get married again without divorcing the first wife have made their case. To save the attachment of Hindu society, the Hindu regulations considered traditions and utilizations. Hindu social cohesion would have suffered had uniformity been imposed. If family law and customs fall under the purview of Parliament and state legislatures, the nation will be subject to a slew of regulations that will benefit some people unnecessarily and unfairly while depriving many others who will be left to their fate to suffer. The State changes have made numerous in-streets in the Hindu regulations harming the consistency of these regulations, influencing numerous considerable standards too [11].

In a Uniform Common Code which is the esteemed established objective, in the event that we have a solitary ground of separation viz. that the marriage has separated hopelessly, the extent of any contention is precluded. [ 7] Where really marriage has separated hopelessly, no helpful reason will be served in figuring out the

responsibility or guiltlessness of the gatherings and in such cases regulation returns to remove the tie [8]

Insightful conversation on these issues shows that there ought to be one single ground of separation, viz. lost breakdown of marriage.ix

Lost breakdown of marriage and separation by shared assent ought to be made consistently a ground to disintegrate the marriage of companions regardless of their strict religions. The basic examination of various existing grounds of separation contained under different separation regulations shows greater consistency and less difference in them. As a result, the conceptual analysis of the various divorce grounds that are currently in use opens the door to legislating their uniformity.

In Naveen Kohli v. Neelu Kohli 2006 (4) SCC 558 the High Court, strongly set out that while allowing disintegration of thirty year old bungle, encouraged the Public authority of India to correct Hindu Marriage Act to make Unrecoverable separate of marriage a substantial ground for separate. The court ruled that irretrievable breakup of marriage was a common cause of divorce in many other countries and advised the Union of India to seriously consider amending the Hindu Marriage Act of 1955 to include it as a cause of divorce. The court requested to send a duplicate of the judgment to the Secretary, Service of regulation and equity, Division of legitimate undertakings, Legislature of India for making proper strides and to oblige such requests that emerged under the watchful eye of the Court in the moment case[12].

The explicit implementation of the irretrievable break principle, which is already in place in England, will be much more beneficial and effective than merely relying on the implied principle. Additionally, the organization of equity based on plainly arranged regulation is better than the settlement from one case to another. For this, Parliament could once again introduce the Marriage Regulations (Alteration) Bill, 1981 (No.23 of 1981), which prior didn't fructify into regulation for explicitly presenting hopeless separate of marriage as the solitary ground for separate, as the bill was permitted to lapse[10] As of late in Ramesh Jangid v. Sunita 2008 (1) HLR 8 (Raj.), The wife wanted her husband to separate from his parents. The Court held that the interest of the spouse was preposterous and as wife was living independently for quite a long time and denying actual relationship, so separate was conceded on the previously mentioned grounds. The court saw that the distinctions that host grown up between the get-togethers, the distance which has broadened for north of 10 years can't be disregarded daintily. As a result, the obvious irreparable breakdown of the marriage necessitates a divorce for both the parties and the court.

In Prabhakar v. Shanti Bai 2008 HLR 250 (Nagpur), parties were hitched in 1955 anyway they have not remained together starting around 1958, and no living together was there since most recent 49 years. The court conceded the pronouncement of Separation as the marriage between the gatherings was hopelessly broken and it was no utilization to go on with such a marriage any longer.

The Law Commission of India and the High Court have suggested that the lost separate of marriage ought to be made a different ground of separation by the council. Keeping what is dead de facto alive de jure would serve

no useful purpose. It is conceivable that in the event that Parliament doesn't follow up on this proposal the lawmaking body of certain provinces of India might start to lead the pack, practicing power under passage 5 of the simultaneous rundown of the seventh schedule.[11]

The Law Commission has recommended that quick move should be made to present a correction in the Hindu Marriage Act, 1955 and the Exceptional Marriage Act, 1954 for consideration of lost breakdown of marriage as one more ground for award of divorce.[12]

For long Christian ladies also had the law stacked against them. Adultery could lead to a divorce for a Christian man; According to the Indian Divorce Act of 1869, a woman was also required to bring an additional charge, such as desertion or cruelty. However, the Bombay High Court recognized cruelty and desertion as separate grounds for the dissolution of a Christian marriage in 1997, making physical and mental torture sufficient grounds for a Christian woman to obtain a divorce. Under the Hindu Marriage Act of 1955, a divorce can be obtained on the grounds of adultery, cruelty, two years of desertion, religious conversion, mental illness, venereal disease or leprosy, or if the spouse has renounced the world and has not been heard from in seven years. Additionally no resumption of co-home for one year after the pronouncement of legal partition, no compensation of intimate privileges for one year after order for compensation of intimate freedoms, or on the other hand assuming the spouse is at fault for assault, homosexuality or bestiality.[13] All significant religions in this manner have their own regulations that administer divorces inside their own local area, and there are discrete guidelines under the Exceptional Marriage Act, 1954 in regards to separate from in interfaith relationships. Under a typical common code, one regulation would oversee all separations for all networks in light of religion. One shouldn't fail to remember that nationhood is represented by one Constitution, a solitary citizenship, one banner and a precedent-based regulation relevant to all residents and India's commitments under global regulation and necessities of different worldwide instruments connecting with the common freedoms of ladies like All inclusive statement of Basic freedoms, 1948 and the Show on the Disposal of all types of Victimization Ladies, 1979 additionally request that regardless of whether one guidelines out Article 44 the Association of India can't sidestep its worldwide commitment to make regulations to eliminate oppression women.[16]

The Article 44 of the Constitution of India requires the state to get for the residents of India a Uniform Common Code all through the domain of India. As has been expressed above, India is an exceptional mix and consolidation of systematized individual laws of Hindus, Christians, Parsis and to some degree the laws of Muslims. However, there is no one-size-fits-all family law in India that is universally accepted by all coexisting religious communities and applies to all Indians.

As examined over, the High Court of India interestingly coordinated the Indian Parliament to approach a Uniform

Common Code in 1985 on account of Mohammad Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945. After her husband pronounced triple Talaq, the Muslim woman in this case claimed maintenance from her husband under Section 125 of the Code of Criminal

Procedure. Both Article 44 of the Constitution and the Muslim woman's right to maintenance under Section 125 of the Code were upheld by the Supreme Court. To fix the above choice, the Muslim Ladies (Right to Security on Separation) Act, 1986 which diminished the right of a Muslim Person for upkeep under Segment 125 of the Court was established by the Indian Parliament. From there on, on account of Sarla Mudgal Versus Association of India AIR 1995 SC 1531, the inquiry which was raised was whether a Hindu spouse wedded under Hindu regulation would be able, by embracing Islamic religion, solemnize a subsequent marriage. A Hindu marriage solemnized under Hindu Law can only be dissolved under the Hindu Marriage Act, according to the Supreme Court, and conversion to Islam and subsequent marriage would not dissolve the Hindu marriage on their own. In addition, it was determined that, in accordance with Section 494 of the Indian Penal Code[15], a second marriage celebrated after converting to Islam would constitute bigamy.

The High Court has consistently advanced the requirement for Parliament to approach a typical common code which will help the reason for public coordination by eliminating logical inconsistencies in light of belief systems. In a number of decisions, the Supreme Court has repeatedly urged the Directive Principle of enacting a uniform civil code as a matter of urgency and top priority to end the unevenness, often inequalities, and exemptions that personal laws have provided over the years. Sadly, in a resulting choice of Lily Thomas v. In Union of India 2000 (6) SCC 224, the Supreme Court clarified that the court had not issued any directions for the codification of a common civil code and that the judges on the various benches had only expressed their views regarding the facts and circumstances of those cases. The case involved the validity of a second marriage that was entered into by a Hindu husband after he converted to Islam. The recent statement made in the Indian press that the Indian government does not intend to introduce legislation to ensure a uniform civil code because it does not want to initiate changes in the personal laws of minority communities can even be deciphered as evidence of the government's lack of intention to do so. Nonetheless, this should not to stop the endeavors of the High Court of India in giving compulsory headings to the focal government to bring a typical common code pertinent to all networks regardless of their religion and practices in a mainstream India. It is hoped that the Supreme Court will review its findings in another case and issue mandatory orders to the central government to create a common civil code that applies to all communities, regardless of religion.

As previously stated, the Indian Constitution's Preamble states that the country will be a secular democratic republic, with no state religion and no religious discrimination by the state. Articles 25 and 26 of the Constitution of India ensure the residents the opportunity of religion and opportunity to oversee strict issues. Simultaneously Article 44 which isn't enforceable in that frame of mind of Regulation expresses that the state will

try to get a uniform common code in India. The elements of a Uniform Common Code is without a doubt a troublesome errand to decide since the individual laws of every religion contain separate fixings, the uniform common code should work out some kind of harmony

between security of major freedoms and strict standards of various networks and in particular not hurt the opinions of the networks that coincide in our country. Law can regulate things like marriage, divorce, succession, inheritance, and maintenance that aren't necessarily religious. India needs a classified regulation which will cover all religions corresponding to the individual laws of various networks.

The widespread alleged misinterpretation of the uniform civil code over the years leads critics of the code to believe that the true principles of Muslim law continue to be eclipsed. It is proposed by Prof. Tahir Mahmood, a famous researcher in his article that "An Indian Code of Muslim Regulation in light of a mixed choice of standards from the different schools of Shariat is the best answer for every one of the contemporary issues of Muslim Regulation." xv It has been accounted for that the High Court of India excused a public premium suit request testing the legitimacy of the traditions of polygamy, talaq and separate rehearsed by Muslims under the individual regulations. Because it is up to Parliament to change or amend the law, the request for the Central Government to make uniform marriage laws for all communities was rejected. Accordingly, the discussion is perpetual and the issue has kept on excess unsettled even till the current day.

### **III. CONCLUSION**

Hence, to finish up we want to figure out the significance and the need the critical sanctioning of the uniform common code. The opportunity has arrived to put all private laws of all religions under a rigid check and dispose of all regulations that are found to disregard the Constitution. Individual laws of all religions victimize ladies on issues of marriage, separation, legacy, etc. There is a critical need to cut out the fair and impartial laws of all religions and structure a diagram for a uniform common code in view of orientation equity and to guarantee the standard of equity cherished by our Constitution and to change regulations which are prejudicial and one-sided. The Hindu code can't be applied consistently to all religions. Then again, triple talaq would need to go, as would polygamy and every one of the benefits that build to Hindu unified families in issues of property and inheritance. xvi In this background, one can express that in our country, individual regulations persistently influence the lives and freedoms of countless ladies of all most every one of the networks and in particular leave them in an extremely denied position. Albeit different endeavors are being started and taken through presenting global instruments, changes of public regulations, changing legal patterns, suggestions of Regulation Commissions and other social first class gatherings to guarantee orientation fairness yet ladies in our nation are not treated similarly and segregated in that frame of mind of family regulation particularly in instances of marriage, separate, support, legacy and so forth. In these circumstances, an orientation simply code

is the need of great importance for a really long time. Therefore, enacting a uniform civil code is a crucial step towards safeguarding oppressed women's human rights, eradicating discrimination against them regardless of their religion or community, and finally aligning our national

laws with international instruments that are legally binding on India as a result of India's ratification of various international conventions and international human rights instruments. The time has come for us to try to bring the idea of a uniform civil code to fruition. To summarize finally, it very well may be said for residents having a place with various religions; A unified code is absolutely necessary for both the advancement of national integration and the maintenance of national unity and solidarity. No compromises can be made on this point. In the true spirit of secularism, various religious traditions must merge to reach a common goal, and some unified principles must emerge. India needs a brought together family regulation code under an umbrella of all its constituent religions. Whether it is the undertaking of the Express, the command of the court or the Desire of individuals it is an issue which time just can choose.

### **CONFLICTS OF INTEREST**

The authors declare that they have no conflicts of interest.

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