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## **IS IMPLEMENTATION OF A UNIFORM CIVIL CODE IN INDIA WITH NO OBJECTION POSSIBLE?**

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### **ABSTRACT**

The debate for a Uniform Civil Code (UCC) is once more part of the famous discourse in India. UCC truly method a not unusual place regulation to manipulate all civil relations, in particular marriage, divorce, succession, etc. Different non-secular legal guidelines presently govern humans belonging to one of a kind non-secular denomination. For instance, a Hindu's marriage may be ruled with the aid of using the Hindu Marriage Act, 1955, while the identical will now no longer practice to Muslims, and their personal non-secular legal guidelines will govern them. Even eleven though politicians and prison luminaries were giving their critiques at the 'constitutionality' of the measure, strictly speaking, the phrases of the Constitution do now no longer certainly go away any scope for a controversial prison Gray area. Article forty-four of the Constitution lays down in clean phrases that enactment of a UCC will be one of the goals of the country of India. If a coverage objective, consisting of the UCC, is noted with inside the Constitution itself, it's far almost not possible to argue that its enactment may be unconstitutional. The debate, thus, is technical and is solid into a vintage prison warfare among Fundamental Rights (FR's) and Directive Principles of State Policy (DSPs). A uniform improvement calls for outside elements as plenty because it wants inner changes. The historic heritage and well-known factor of the variety is likewise plenty depended on. This paper pursuits to provide an explanation for how religions in India are being subjected to plenty backlash because of the effect of unsuitable justice trial strategies and strenuous stress of the bulk over the minority groups. This paper additionally pursuits to deliver with inside the scope of UCC and the way a long way fetched is the dream of reaching it with inside the cutting-edge duration. We deliver with inside the conflicts among the Fundamental Rights and Directive Principles of State Policy, in addition to the interconnection of UCC and Equality. We delve into few landmark Supreme Court instances which narrowly explains the lack of ability of the courtroom docket in deciphering private legal guidelines, and additionally how politics have massively inspired the non-secular lines and practices in India.

## **Introduction**

Religion, Laws and Politics, all the origins date again to pre-British duration wherein India, full of wealthy tradition and history. The Constitution of India which laid the muse to the one of a kind acts and legal guidelines that govern our land, we're nevertheless caught with contradictions at hand. In India, one of a kind groups are ruled with the aid of using one of a kind private legal guidelines like Hindu Marriage Act, Hindi Succession Act, Hindu Adoption and Maintenance Act for Hindus. Whereas Muslims, Parsis and Christians are ruled with the aid of using their personal private legal guidelines. Article forty-four of the Constitution presents that, "The State shall endeavor to stable for the residents uniform civil code in the course of the territory of India." The want for a Uniform Civil Code has been pointed with the aid of using Supreme Court in its numerous decisions that have brought about the talk whether we must enforce and contain UCC. In *Mohd. Ahmed Khan v Shah Band Begum*, the Supreme Court determined that, "A not unusual place civil code will assist the motive of country wide integration with the aid of using eliminating disparate loyalties to regulation that have conflicting ideologies." The Supreme Court in *Shah Band* case has directed the legislature to move for Uniform Civil Code as mandated with the aid of using Article forty-four of Constitution.

## **Religion in India – An overview**

Religion in India is assorted primarily based totally on exclusive spiritual ideals and practices. Evidence relationship returned to the prehistoric faith withinside the Indian subcontinent is derived from scattered Mesolithic rock artwork depicting rituals and sacrifices. Neolithic pastoralists inhabiting the Indus valley buried their lifeless in a way suggestive of non secular practices that included an afterlife. Other South Asian stone age webweb sites which include Bhimbetka rock safe haven in critical Madhya Pradesh and the Kupgal petroglyphs of Japanese Karnataka incorporate rock artwork portraying spiritual rites and proof of viable ritualized music. The Harappan humans of the Indus Valley civilization which lasted from 3300 to 1400BC had been focused at the Indus and Ghaggar- Hakra river valleys. The oldest surviving textual content of Hinduism is the Rigveda, produced via way of means of the Vedic length and relationship to 1700-1100BC. India additionally incorporates the biggest populace of Muslims withinside the world, with approximately one-0.33 being from South Asia. Being the cradle of Ahmadiyya Islam, India is one of the locations with at the least 2 million Ahmadi Muslims. The shrines of well-known deities of Sufism, like Moinuddin Chishti and

Nizamuddin Auliya also are determined in India. Tradition states that Christianity became added to India via way of means of St. Thomas the Apostle, who visited Muziris in Kerala in 52BCE. Although the precise origins of Christianity in India stay unclear, there may be a trendy scholarly consensus that Christianity became rooted in India via way of means of the sixth century AD, which includes a few groups who used Syriac liturgically and the faith's life in India may also expand as a long way returned because the 1st century. Geographically, maximum Christians live withinside the Southern a part of India, specifically in Kerala, Tamil Nadu, and Goa. The Preamble of India Constitution states that the whole Constitution is deeply based in Hinduism because it encompasses all of the numerous faiths, doctrines, and ideologies.

However, at a later stage, the word 'secularism' is brought via way of means of the forty second change to the Indian Constitution however with void consequences of a isolating nation and faith in its entirety. Throughout India's wealthy history, faith has been an essential a part of our us of a's lifestyle as spiritual range and spiritual tolerance are each installed withinside the us of a via way of means of regulation and custom. Today, India is a safe haven to round 94% of the worldwide populace of Hindus, with a majority of shrines and temples positioned withinside the us of a, as are the the the birthplaces of maximum Hindu deities. The Preamble to the Constitution of India declares India as a "sovereign, socialist, secular, democratic republic". Freedom of faith is a essential proper consistent with the Constitution. The Constitution additionally indicates a uniform civil code for its residents as a Directive Principle, even though it hasn't been carried out as they're Constitutionally unenforceable. Religious politics, specifically that expresses the Hindu motion has strongly prompted Indian politics. Due to the the excessive oppression confronted via way of means of the decrease castes, the Constitution of India covered provisions for fine moves for sure sections of the society.

### **Uniform Civil Code – Historical background**

24th August 1924 is the maximum outstanding date withinside the records of India. The day on which the ever-effective Britishers landed at the Indian soil searching for spices and later succeeded in bringing an entire us of a beneath Neath them. The foreigners have been awestruck seeing the wide variety of religions observed with the aid of using the human beings. It had additionally introduced to a brand new faith in India i.e., "Christianity". The idea of the Uniform Civil Code originated from the lex loci document. The lex loci document of 1840 emphasised the codification of Indian legal guidelines associated with contracts, crimes, and proof apart from the non-public legal guidelines of Hindus and Muslims. Due to the boom

withinside the wide variety of private issues, the charter of the B. N. Rao committee changed into the want of the hour. Thus, the Hindu regulation changed into codified in 1941 primarily based totally on a civil code for marriage and succession for Hindus.

The Queen's 1859 proclamation promised absolute non-interference in spiritual matters. The Britishers may not have dared to play with the spiritual sentiments of Indians which can have negatively impacted their exchange of goods. In the post-colonial era, Dr. B.R. Ambedkar and Jawaharlal Nehru proposed the want for Uniform Civil Code in India however have been dissented with the aid of using outstanding leaders like Sardar Vallabai Patel and Dr. Rajendra Prasad. The query changed into hotly debated at the ground of the constituent meeting attracting assist and criticisms. Mohammed Ismail endorsed for inclusive of the UCC in [1]Article 33 which does now no longer bring about the giving up of private legal guidelines of residents. The factor of debate in opposition to UCC targeting the proper to stick to one's legal guidelines. Mr. Ayyangar positioned forth the factor that the Indian idea of secularism offers with the tolerance of various religions so the residents ought to be allowed to examine their legal guidelines. Even the ladies individuals of the parliament withdrew their assist for UCC fearing competition from the fundamentalists. The resistance to the adoption of UCC changed into expressed with the aid of using them with the aid of using terming the idea "anti Hindu" or "anti- Indian". This competition resulted withinside the inclusion of the UCC withinside the Directive Principles of State Policy. four Article 33 of the Constitution of India

### **Uniform Civil Code and Equality**

UCC is planned to advance equity, public combination, orientation balance and government assistance of ladies. The Indian Constitution visualizes Fundamental Rights as the cardinal rule of our vote based system which declares i.e., the right to equity as a reinforcing point of support to every one of the "Indian Nationals". Article 44 addresses the Directive Principles of State Policy in the Constitution comments the Indian state to keep a solitary regulation all through the nation by carrying out the Uniform Civil Code. Up until this point, the India has never prevailed with regards to carrying out correspondence of people in the social circle. Since, the individual laws of residents oversee them in certain issues, it is exceptionally apparent that ladies are separated. The UDHR, in its prelude additionally specifies equivalent status, freedoms, open doors and status to ladies in correlations with men. With the execution of solid and strong individual regulations and by balance embracing all kinds of people, there will be orientation predispositions in our sovereign vote based conservative nation accordingly

advancing orientation equality. The execution of UCC unexpectedly can have unnatural contentions in the country. A lady's freedom and upliftment have forever been discussed yet nothing has been finished for them. There is a huge slip by in the Hindu regulations however the Muslim, Christian Parsi regulations actually keep on being extremely rigid in their practices. In this manner, UCC is without a doubt the requirement for the general public in the present current time yet such an extreme transformation will not occur in a day, it will require a long time for UCC to come into full impact. UCC requires a legitimate developmental cycle and in addition to a progressive change. UCC is a curse for the ongoing society yet perhaps throughout some undefined time frame, by development and corrections of specific individual regulations it will end up being a positive viewpoint for the country.

### **The Conflict between Fundamental Rights and Directive Principles of State Policy**

The key freedoms are revered in Part III of the Constitution beginning from Art 12 to Art 35. The idea has been acquired from the United States and can be upheld in the normal courts of the country. Then again, Directive Principles of State Policy are enveloped in Part IV of the constitution. The idea has been acquired from the Irish Constitution yet is viewed as a "novel element" with thoughts and proposals that should be considered during the outlining of approaches. DPSPs can't be implemented in courts. In India. The major right to religion has been conceded by Art. 25-28 of the Constitution. Indians have the opportunity of heart, and free calling, practice, and proliferation of religion, the opportunity to oversee strict issues, the opportunity to the installment of charges for the advancement of a specific religion, and the opportunity to participate in strict love in specific instructive establishments. The central matter to be noted is whether Indians reserve the privilege to be administered by private regulations as "individual regulations" is excluded from Art 13. For the situation *State of Bombay v. Narasu Appa Mali*, the court addressed whether individual regulations could be deciphered as 'regulations in force' as per Article 13(3) (a). Equity M.C. That's what change expressed " The word 'individual regulation' was not utilized in Art 13 pin request to leave it outside the ambit of Part III of the constitution as the designers of the constitution would have known about the need to change the law. Workmanship 44 states that "the state will try to get the residents a uniform common code all through the domain of India". As indicated by B.N. Rao, legitimate privileges are overwhelmed in Part III and the non-reasonable are remembered for Part IV. At the point when there is a contention between them, the courts ought to utilize the teaching of agreeable development while articulating decisions. On account of *State of Kerala v. N.M.*

Thomas, the SC held that both the Directive standards and Fundamental freedoms ought to be understood as one with one another and each work ought to be taken to determine any evident irregularity that exists between them.

### **The Supreme Court's intervention in personal laws**

In the case Mohd. Ahmed Khan v. Shah Bano Begum, the SC directed Mohd. Ahmed Khan to pay alimony to his ex-wife even after iddat period as she was entitled to receive it under S.125 of CrPC.<sup>1</sup> The court held that the result of this discourse was that there is no strife between the provisions of Section 125 of the CrPC and Muslim Law. In the case of Mary Roy V., the State of Kerala<sup>2</sup>, the SC mediated in the individual laws of Syrian Christians and decided that Syrian Christian ladies were qualified for an equivalent offer in their dad's property. In 2017, the SC encroached upon the Muslim individual regulation and proclaimed Triple Talaq as unlawful. These cases have advanced a contention between three mediated viewpoints "Secularism", "Uniform Civil Code" and the "Opportunity of Religion". The Preamble of the Constitution pronounced that the state isn't worried by the connection between a man and their religion. Despite the fact that workmanship 44 set forth that there is no association among religion and individual regulations in a humanized society, the inquiry that we ought to consider over is regardless of whether Indian culture is truly socialized.

### **Uniform Civil Code in Goa**

Goa is the main state in India where every one of the residents are administered by similar regulation with regards to marriage, separate, progression, and so on. In the wake of being perceived as a piece of India in 1961, the parliament approved the utilization of the Portuguese Civil Code in 1867. The Goan code comprises of four sections, managing limit, procurement of privileges, and cures. The code has been served by segment 5(1) of the Goa, Daman, and Diu Administration Act, 1962. Under the code, marriage is perceived as an agreement between two individuals. Just the positive side of the Act is talked about. The code disallows polygamy aside from Hindu men under unambiguous conditions referenced in the Codes of Usages and Customs of Genital Hindus of Goa. For Hindus, separate is allowed exclusively on the grounds of infidelity of the spouse. The Catholics wedding in chapels have rejected the arrangements of separation. In a similar way, the Special Marriage Act assumes an alternate part in Goa. The

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<sup>1</sup> Section 125 of Criminal Procedure Code

<sup>2</sup> Mary Roy v The State of Kerala & Ors AIR 1986 SC 1011

uniform common code ought to be uniform to every one of the residents independent of race, religion, orientation, and so on. Thus, the Govan code can't be known as a uniform common code.

### **The Hijab Row**

In the hijab row, the fundamental question to be answered was whether wearing the hijab is an essential religious practice or not. The Karnataka High Court bench comprising of Chief justice Ritu Raj Awasthi, and Justices J M Khazi and Krishna Dixit stated that the wearing of hijab by Muslim women does not form a part of essential religious practice in the Islamic faith. In the case *Tilkayat Shri Govind Lalji Maharaj v. the State of Rajasthan*<sup>3</sup>, the SC held that the test to decide the topic of concluding what is an essential piece of a religion is whether it is viewed as basic by the local area following that religion or not. On account of *Hasan Ali v. Mansoor Ali*, the Bombay High Court held that "What is the fundamental or essential piece of religion not entirely settled in that frame of mind of the precepts and practices that are viewed by the local area as a piece of their religion and furthermore should incorporate them?" In the hijab issue, the seat which concluded the case comprised of two Hindu and one Muslim adjudicator. Two Hindu appointed authorities concluded that hijab is definitely not a fundamental strict practice in Islam. Judges ought to be knowledgeable with strict regulations while concluding cases influencing the strict opinions of millions of individuals.

### **Conclusion**

The expression "secularism" signifies to be "discrete" from religion. In western nations "Secularism" implies that the state doesn't have an authority religion while the Indian idea of secularism is "resistance to every one of the religions, regard their practices and live as one". India is an extremely different country with 1.4 billion individuals who have a place with assortment of identities and religions. Since India is a strictly pluralistic and multi-ethnic majority rules system, executing the Uniform Civil Code without upsetting the premise of our society is unimaginable. The traditions and practices of individuals having a place with various ranks inside a religion are likewise very unique. Since there isn't consistency in rehearses inside religions, executing a uniform common code the country over is only unthinkable. Strict congruity is an idea that holds areas of strength for india. The Uniform common code will be

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<sup>3</sup> *Tilkayat Shri Govind Lalji Maharaj Vs. The State of Rajasthan & Or* [1963] INSC 5

founded on the prescribed procedures of specific religions which would straightforwardly confine the adherents of different religions from rehearsing their customs. This would hurt the strict feelings of individuals and would bring about clashes and gore. For the execution of UCC, there is a prerequisite of an ever-evolving viewpoint among Indians. However, tragically, the Indian culture has not arrived at to that norm.



**References**

[www.livelaw.in](http://www.livelaw.in)

[www.thehindu.in](http://www.thehindu.in)

[www.crpc.in](http://www.crpc.in)

[www.businessstandard.com](http://www.businessstandard.com)