



## Uniform Civil Code in India – still a distant dream

Alka Bharati

Assistant Professor, Department of Laws, Bhagat Phool Singh Women University, Khanpur Kalan  
Sonepat, Haryana (India)

**Abstract:** The term Uniform Civil Code connotes the idea of same set of civil rules for the citizens irrespective of their religion, caste, etc. Civil law governs the matters pertaining to marriage, adoption, inheritance, succession and so on. In India such matters of the citizens are still governed by the personal laws of their respective communities. It's the mandate upon the state as a directive principle of state policy to promulgate a Uniform Civil Code for whole the country. But even after 66 years of independence it is just a distant dream leading to various ambiguities in the interpretation of personal laws. So, the present paper is deliberating upon the importance of uniform civil code as a tool to create religious harmony, their by promoting fraternity as enshrined in the Constitution. The judgments pronounced by the Hon'ble Supreme Court are very constructive in this regard and it has been discussed in an elaborate manner in this paper.

**Keywords:** - Uniform Civil Code, Constitution, Secular, Democratic, Directive Principles.

### I. Introduction

The term Uniform Civil Code implies the same set of secular civil laws to govern all peoples irrespective of their Religion, Caste and tribe. The areas covered under it are the Laws related to Marriage, Divorce, Adoption, and Inheritance and acquisition and Administration of property. Uniform Civil Code is a mandate upon the state under article 44 of the Constitution as directive principle of state policy. As it is provided under Article 37 of the Constitution that directive principles of state policy are not enforceable by the Court of Law. But this fact does not undermine the importance of the directive principles. Just after Independence the Circumstances were such that it was not feasible to impose a Uniform Civil Code on the citizens. That is why it has been covered under the directive principle of state policy.

In this context it is relevant to discuss here that whether the directive principles of state policy and the fundamental rights are contradictory to each other or vice-versa. The preamble of Indian constitution is the mirror of constitutional spirit. It aims at to constitute India as a Sovereign, Secular, Democratic, Republic. It has to secure Justice, liberty, and equality to the citizens and thereby promoting fraternity while assuring dignity of the individual and unity and integrity of the nation. It contains those elements which are the essence of the Constitution. So, all the provisions given in the preamble are moving towards a particular goal i.e. fraternity assuring mutual respect for each other. In his sense it can be inferred from the Constitutional spirit that fundamental rights and directive principles of state policy are Complementary to each other. The mere fact that one is enforceable by the Court of law under article 32 and 226 of the Constitution and others are non-enforceable does not undermine the importance of directive principles of state policy. Fundamental rights are the inalienable and inherent rights of the individuals by virtue of the fact that any individual exist in society. The fundamental rights impose the duty upon the state not to violate these rights. So, in sense these are the nature of negative duty imposed upon the state. But a mere guarantee of the fundamental rights in the constitution would not have been sufficient to help the attainment of socialistic pattern of the society. There should be some guidelines for the state to act in that direction. So, the directive principle of the state policy is not intended to curtail state action rather it is intended to make the state act. It requires a pro-active role of the state and that is not possible in a short span of time. It is the reason that why these directives are not made enforceable.

So, in this context the importance of uniform civil code can be visualized. The framers of Indian Constitution were convinced that certain amount of modernization is required before uniform civil code is imposed upon the citizens. Though the Hon'ble Supreme Court has emphasized upon the need of Uniform civil code to settle the ambiguity which has arisen due to the different interpretations of various personal laws.

For instance it was held in **Sarla Mudgal vs. Union of India and others**<sup>1</sup> that, “Article 44 is based upon the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees freedom where as Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of Hindus such as relating to marriage, succession and like have all a sacramental origin, in the same manner as in the case of the Muslims or the christens . The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of national unity and integration, some other communities would not, though the constitution enjoins the establishment of a “Common Civil Code” for the whole of India.

The Government of India if therefore requested through the Prime Minister of the Country to have a fresh look at Article 44 of the Constitution of India and Endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. It was also reminded by kuldeep Singh j in this case that even 41 years thereafter; the rulers of the country are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The court further emphasized when more than 80% of the citizens have already been brought under the codified personal law there is no justification what so ever to keep in abeyance, any more, the introduction of “Uniform Civil Code” for all citizens in the territory of India.”

In Sarla Mudgal case the issue was that the husband has performed the second marriage while converted into Islam but without dissolving the first marriage. So, if the literal interpretation of section 5 and section 11 of the H.M.A, 1955 is done then he cannot be held liable under the Hindu marriage act for bigamy because section 5 uses the word, “If a marriage is solemnized between to Hindus.” The Hon’ble Supreme Court has resolved the issue by saying that if there if a controversy between two personal laws then such law should prevail which is serving the purpose best. So, it was held that a conversion to Islam does not amount to automatic dissolution of the marriage performed under Hindu law.

In **Lily Thomas and others vs. Union of India & others**<sup>2</sup> ,“The court rejected the contention that the decision in Sarla Mudgal vs. Union of India is violative of rights guaranteed under article 21 of the constitution. The judgment in Sarla Mudgal case has neither changed the procedure nor created any law for the prosecution of the person sought to be proceeded against for the alleged commission of offence under section 494 IPC.”So, if the Uniform Civil Code would have been provided for the citizen as the constitutional mandate then the problems which has arisen in the cases of (Mohd. Ahmed Khan vs. Shah Bano Begum), (Daniel latifi & other Vs. UOI) would have not been there.

In **Shah Bano case**<sup>3</sup> the issue was that whether a Muslim Woman is entitled to claim maintenance under Sec. 125 Cr.P.C. It was held that Muslim women are entitled to claim to maintenance under section in 125 Cr.P.C. This is a secular provision and the benefit is available to every citizen irrespective of their caste or religion etc. It was further held that although the Muslim law limits the husband’s liability to provide for maintenance of divorced wife to the period of Iddat, it does not contemplate or countenance the situation envisaged by section 125 of the code of criminal procedure”. The court held that it would be incorrect and unjust to extend the above principle of Muslim law to case in which the divorced wife is unable to maintain herself.

After the judgment of Shah Bano case there was some unrest in the Muslim community. So, in consequence of that the **Muslim women (Protection of Rights on divorce) Act, 1986** was passed which states that the husband is liable to pay maintenance to the wife daring iddat. But this controversy was resolved by the Hon’ble Supreme court in **Daniel latifi & other Vs. Union Of India**<sup>4</sup>, “It was held that clause (1-a) of section 3 does not limit the duty of the husband to pay maintenance only for the period of Iddat rather the duty is to make the necessary arrangements within the Iddat period but the arrangements has to be made for the entire life of the wife until she gets remarried. Clause (I-a) requires the Husband to make necessary provisions for the wife which means provisions like her shelter and the similar means where as it also requires the payment of Maintenance Which Implies payment of Money. There are two interpretations one in which the payment etc. shall be made only for the Iddat period. This will render the provisions unconstitutional as it will be violative of Article 14 and 21. So the arrangements have to be made within the Iddat period but for the entire period till she gets remarried. This will serve the purpose of Act better and

<sup>1</sup> Sarla Mudgal vs. Union of India and others (1995 )3 SCC 635

<sup>2</sup> Lily Thomas and others Vs. Union of India & others (2000) 6 SCC 224

<sup>3</sup> Mohd. Ahmed Khan Vs. Shah Bano Begum (1985)2 SCC 556

<sup>4</sup> Daniel latifi & others Vs Union of India 2001 Sc.

will bring it in line with the Cr.P.C .This Interpretation shall be followed that would render the statute Constitutional. In this Case it was also emphasized that the Act of 1986 is only available to the divorced woman and therefore a woman who is still having a subsisting marriage cannot file an application under the Act. She has to file it either under the personal law or the Cr.P.C. It was held in **Iqbal Bano Vs. state of U.P. and another**<sup>5</sup>, “That the direct petition under section 125 can be filed by a non divorced Muslim wife. Even if a petition has will filed under section 125 by a divorced Muslim wife the Magistrate is free to treat such petition as a petition under 1986 Act.

## II. Conclusion

So, it can be inferred from the above judgments that the Hon’ble Supreme Court has reiterated about the need of Uniform Civil Code again and again and has settled the controversies and ambiguities which have arisen due to the apparent conflicts in the personal laws. If the Uniform Civil Code would have been implemented for whole of the country then such kind of controversial issues would have been resolved by the statutory enactments only. India is a country of Unity in Diversity having Multi religions and cultures. So, civil matters of the citizens should be taken in the same clutches of law only then the prime constitutional goal of fraternity can be materialized in the real sense otherwise these divisive forces would continue to violate the constitutional spirit. So, in this sense uniform civil code is the need of the hour. A strong political will is required for the same along with the feeling of religions tolerance and mutual respect on part of each and every citizen of India.

## III. References

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<sup>5</sup> In *Iqbal Bano Vs. state of U.P. and another* 2007 SC