Chapter - 4

Uniform Civil Code :
Misconception and Reality
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Uniform Civil Code is often debated for political purposes. Whereas the reality is that masses find such debates difficult to understand. One point stands out clearly on which everyone can agree; the problem is serious one and it needs careful examination. There are direct claims and indirect comments without understanding whole issue. To dispel the ignorance manifested wittingly or unwittingly, researcher is taking up the issue from a point of view of an academician and hopes to pinpoint myths and realities revolving around Uniform Civil Code.

Article 44 of the Indian Constitution states that :-

"The state shall endeavour to secure for citizens a Uniform Civil Code throughout the territory of India."

One of the most common misconceptions about the Uniform Civil Code is that the Hindus have surrendered their personal laws for the sake of uniformity throughout the country. Another important misconception is that the four Hindu enactments made in 1955-56 have rectified all the evils of Hindu's laws associated with, inter alia, the gender justice. The third popular fallacy about the Uniform Civil Code is that Muslims are the only stumbling
block in the implementation of the directive contained in Article 44 of the Indian Constitution. The fourth popular misconception is that the Muslim law is against the gender justice. Hence Muslim women are the most inferior women in India with respect to their legal rights as opposed to others. The fifth popular misconception is that the Uniform Civil Code, if implemented, would strengthened the national unity. The sixth fallacy is that the personal laws are a gift by the Britishers and extended by the Constitution of India to the minorities especially Muslims in India. The seventh misconception about the Uniform Civil Code and personal laws is that, in all the states, all the religious communities have surrendered their laws for the sake of uniformity and national unity.

But the reality is otherwise. It is not so that only the Muslims are opposed to the change in their religion based personal laws. If we go through the history of the Hindu Code Bill, we would find that there was a very stiff resistence by the Hindu religious scholars, constitutional academicians, political leaders and the upper caste Hindus. Even the first Hindu Code Bill was allowed to lapse. It was due to the inhuman and degrading state of Hindu women in their ancient laws that the then government headed by Pt. Jawaharlal Nehru, brushing aside all opposition, got the Bill passed in Parliament despite a threatened veto by President of India Dr. Rajendra Prasad. Due to the threat posed by Dr.
Rajendra Prasad and the stiff opposition by the upper caste Hindu especially Brahmin certain anti women and anti secular laws, were incorporated in four Hindu Acts.¹

It will be desirable to discuss some of the important fallacies in detail.

A. Dimensions of personal laws.
B. Erroneous approach for Uniformity
C. Misconception about Muslim Personal Laws
D. What does Article 44 demand?

A. Dimensions of Personal Laws

(i) Diversities based on region and territory

It is a great myth that different sections of Indian citizens are governed by different personal laws due to the fact that they follow different religion which have laws of their own. In fact neither all followers of any religion are governed by uniform law throughout India, nor is any personal laws uniformly applicable to all followers of a religion from which it is derived. The law differs from region to region and territory to territory and often differently applies in different circumstances.

The scope for countrywide uniformity as envisaged in Article 44 is restricted by the Constitution itself as enactment of personal laws, including its family laws has been placed in list III (concurrent list) of the Constitution.² Accordingly, parliament and
state legislature both can make, and have made, laws in these areas. Parliamentary legislation on family law matters is moreover often supplemented with additional provision by the state legislatures.

The other dimension of diversity in Family Laws may be noted as below:

I. Jammu and Kashmir state has, under the special provisions of the Constitutions applicable to that state, its own set of family laws – both statutory and non-statutory.

Their application is regulated by the Sri Pratap Consolidation of Laws Acts of 1977 (B).

II. When Pondichery was annexed to India in 1954, local inhabitants (Hindu, Muslims, Christian and others) were given a choice to be governed by the old French Civil Code (Applicable in region under the French Colonial Rule).

III. In 1962 when Goa, Daman and Diu became part of India, the Portuguese Civil Code 1867 and its supplementary laws – including the archaic Hindu usages decrees of 1880 were written in force in the entire region. The position remains unchanged after the creation of the state of Goa.

IV. In Nagaland and Mizoram the local customary law was protected by a special provision incorporated in the Constitution in 1962, through an amendment. The purpose
of this amendment was to protect the identity of the local tribes. In these and many other regions the Hindus, Muslims and Christians are governed by personal laws which are significantly different from those which govern their co-religionists citizens in the other parts of India.

(ii) Diversities based on specified group of persons

There are various categories of persons whom personal law enactments regard as the exception to the general Indian citizen by which they are exempt from the purview of the executive action through statutory law. This phenomenon is found almost all over the country where certain categories of persons, in matters of their personal law, are exempt from the purview of statutory law. This leads the complicated diversities in the field of personal laws.

Under the Indian Succession Act, 1925, the government of every state is authorised to issue a gazette notification in order to exempt from the application of that Act, any particular race or tribe, in the state on the ground of 'impossibility' or 'inexpediency' of the applying the same. This authorisation has in the past, been exercised in the favour of the Christians of Coorg, certain Christian Races in Assam and the several Christian Tribe in Bihar and Orissa.

After independence the age old tradition of protecting tribal and sectarian laws was allowed to continue by the Indian
Constitution the two privileged classes under the Constitution were created viz., the "Scheduled Caste" and "Scheduled Tribe". Out of these two privileged classes special exemptions have been given to the Scheduled Tribes, though no such special exemption has been given to any of the scheduled caste under any of the personal law statute. Thus, all the four Hindu-law enactments of 1955-56 are wholly inapplicable to each of the Scheduled tribes. Inapplicability of some of these Acts to certain tribes in Assam, Bihar and Orissa has been judicially confirmed.

As such these Acts cover almost the entire gamut of family law and succession, the tribal customs in these areas stand fully protected. And due to the concentration of particular tribes in particular regions of India, this statutory perpetuation of their customs, that are at great variance with the general law and pratice, adds a new chapter to territorial diversities in the personal laws of India.

(iii) Diversities based on customs usages

Going through the four Hindu-Law enactment of 1955-56 one finds an interesting and relevant aspect of diversity which is based on the customary law of Hindus, Buddhists, Jains and Sikhs. Specific provisions relating to the customs of Hindus, Buddhists, Jains and Sikhs, running counter to general statutory provisions, enjoy full legal protection under the provisions of the concerned
enactments themselves. Among the customs and customary institutions that remained so protected are:

(i) those violating statutory rules relating to ‘sapinda’ relationship and prohibited degrees in marriage;\(^{17}\)

(ii) Customary marriage – rites replacing ‘Saptapadi’;\(^{18}\)

(iii) Customary divorce;\(^{19}\)

(iv) Custom of adopting major and married children.\(^{20}\)

The customs under each of the abovementioned heads maybe in vogue among the Hindus in any “local area, tribe, community, group or family”\(^ {21}\). No court has perhaps ever frowned on this wide-based protection of diversified custom despite the fact that the term “law” in Article 13 of the Constitution is specifically extended to custom and usage having the “force of law”.

Not only the Hindu law retains custom as an exception of the general rule but the customs in derogation of the general law are protected under other laws as well. For example, the law relating to civil marriage did not contain any statutory provision relating to the ‘prohibited degrees’ was not subjected to the face of contrary customs. But after 9 years the law was amended to protect customs and usages contrary to the rules of ‘prohibited degrees’ in marriage.\(^ {22}\) Under the amended law customs find a greater role to prevail and be recognized, as in this case it would be sufficient if it governs within ‘atleast one of the parties’ to
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marriage\textsuperscript{23} (unlike under the Hindu Marriage Act which would conceive supremacy of the custom in this regard only if it governs both parties to marriage.\textsuperscript{24}

The Muslim Personal Law (\textit{Shariat}) Application Act, 1937 also contains provisions relating to custom and usage applied to wills and legacies and adoption. These provisions are contrary to the Islamic law yet this discriminatory provision was incorporated into the Act due to purely political reasons. Interestingly such a provision has been repealed in Pakistan by the Pakistan Muslim Personal Law (\textit{Shariat}) Application Act, 1962. The net result of the exception to the general law is that in predominantly Muslim Union territory of Lakshadweep and in Malabar region of Kerala, there remains a dyarch in respect of law applicable to the Muslims.

The diversity in the realm in personal laws in our country is very wide. This diversity is based not on religious but other grounds. Having their roots in the distant past the interterritorial and custom based diversity in the sphere of personal law could not be buried in the debries of freedom movement.

\section*{B. Uniformity: An Erroneous Approach}

Article 44 appears in Part IV of the Constitution which provide "Directive Principles of State Policy". The most important Article which governs this part is Article 37 which contains the following three points:
(1) The principles contained in part IV shall not be enforceable by any court.

(2) This principle will be nevertheless, fundamental in the governance of the country; and

(3) It shall be the duty of the state to apply to these principles in making laws.

Article 44 clearly, does not ask the legislature to enact a civil code; It contains a principle which the state should apply in making civil laws. The principle of Article 44, basically, is 'uniformity in civil laws'. The state is expected to apply these principles – whenever wherever and as far as, possible – making laws relating to civil transactions.

In the constitutional expression "Uniform Civil Code" the prefix, "Uniform" – not found in any of existing codes (IPC, CPC, CrPC), and the absence of a capital ‘C’ in the words "Civil" and "code" very were establish that this expression does not pointout to a single comprehensive law; it only prescribe a principle of policy: that in reforming old and enacting New Civil Laws the principle of Uniformity should be observed as far as possible²⁵.

What appears strange is that the interpretation or implementation of Article 44 on line that application of the same law for all the members of a particular community throughout the length and breadth of India is not talked about at all. Nobody
demand that all Hindus should be governed by one and the same law in all circumstances in all the parts of country. Nobody is interested in the abolition of the Hindu customary law which is still in the force. Until today the target of law men and laymen who have taken interest in Article 44 has been the personal law of the religious-cum-cultural minorities, especially the Muslim Personal law which the protagonists of uniformity want to be abolished by one stroke of legislation.\(^{26}\)

Ordinarily, the principle of Uniformity to be applied in making civil laws, is fundamental in the governance of the country; but if – for any valid and cogent reason – the state cannot apply the principle of uniformity by while making civil laws, no court in the country can in any way have the principle enforced. The constitution leaves it, entirely and exclusively to the wisdom of the state when, how, in what way, and to what extent it can and should apply the principle of uniformity in making civil laws.\(^{27}\)

Attempts have been made both by the legislature and court to apply Hindu law to non-Hindus in the place of their own laws; and this is often done under the pretext of effecting uniformity in family law. For example – the blanket restriction on marrying a cousin (drawn from the Hindu Laws) under Special Marriage Act of 1954.\(^{28}\)
Another instance of this legislative trend was found in a local law enacted in 1950 by the West Bengal government, protecting continued enforcement of the classical (Dayabhaga) Hindu law to the Muslims in the former state of Cooch-Bihar now merged in West Bengal. This was done to counter effect a law enacted by Parliament during the same year, under which the Muslim Personal Law (Shariat) Application Act of 1937 would have become applicable in Cooch-Bihar – in 1950 itself. For 30 years extension of the Shariat Act, 1937 to that territory was kept stalled and the move had the blessing of the Calcutta High Court.

It is submitted that it is highly improper to impose the law or usage of a particular community over another under the pretext of seeking 'Uniformity' in civil laws. By no dint of imagination can the constitutional doctrine of the uniformity in civil law means imposition or forced domination of one particular legal culture or a total suppression of another.

C. The Great Fallacy about Muslim Personal Law

It is a popular belief that the Muslims alone have a personal law and that this personal law is the stumble of block in implementing the directive of Article 44 of Indian Constitution. Muslims are blamed that due to their personal law the directive of Article 44 is not being realised as the do not want to forgo their personal law in favour of a Uniform Civil Code. This is a fallicious notion: There are a varieties of personal laws which are
applicable to different communities both Muslims and non-Muslims in India. They are as follows:

I. Hindu Personal Laws largely codified but partly the codified (Also applicable *mutatis mutandis*, to Budhists, Jains and Sikhs);

II. Customary Law of Hindus, Budhists, Jains and Sikhs wherever protected by legislation or case law;

III. Tribal law of Hindus and others;

IV. Christian Personal Law - reformed and codified.

V. Parsi Personal Law - reformed and codified;

VI. Jewish Personal Law - wholly unreformed and uncodified and;

VII. Muslim Personal Law partly reformed but uncodified.\(^{32}\)

Another issue which has been forcefully advocated by justice Kuldeep Singh in *Sarla Mudgal Case*\(^{33}\) was "Have the Hindus, Budhists, Jains and Sikhs (constituting more than the 80% of the citizen in India) been brought under ‘one unified code’.

The answer to this question is in negative. The fact is that the Hindus, Budhists, Jains and Sikhs are still not governed by a uniform law.

(I) The four Hindu law enactments of 1955-56 do not cover the entire gamut of Hindu Personal Law. Certain important
aspects of Hindu Law are still qualified i.e., the law relating to co-parcenary, joint family and partition of property. In these matters the classical Hindu law is still applied. Hindu law, broadly speaking, has two schools (1) *Mitakshara*, (2) *Dayabhaga*. Even today thousands of cases relating to propertis are being decided by the court in accordance with principle of the above mentioned schools.

(II) The four Hindu law enactment of 1955-56 have uniform application through out the territory of the India. But, in Goa, Daman Diu, there still is in force old Hindus usages decrees of 19th century. In Pondichery most of Hindus have opted to be governed by the French Civil Code. Similarly Jammu and Kashmir has its own Hindu law enactment, State of Uttar Pradesh and Tamil Nadu have amendments to Hindu Code. Andhra Pradesh and Kerala have enacted special Hindu Law statutes supplementing the central laws.

III. In south Indian states – Andhra Pradesh, Karnataka, Kerala and Tamil Nadu, the Hindu matriarchal families are governed not by the Hindu code, but by a variety of customary laws.

IV. Local custom and usage prevailing in North-eastern states – Nagaland, Mizoram, Meghalaya, Arunachal Pradesh and Sikkim are fully protected under Article 371A of the Indian Constitution or by virtue of legislative provision and judicial decisions.
V. Various tribes are free to follow their own customs which differ from tribe to tribe and place to place under Section 2-3 of the four Hindu enactments. The entire tribal population following the Hindu, Buddhist, Jain and Sikh religion is fully exempt from the four Hindu law enactments.

VI. The Hindu Law Enactment allows all the Hindus, Buddhists, Jains and Sikhs to follow their respective customs and usages in the following matters :-

(i). Prohibited degrees in marriage and sapinda relations\(^{35}\) (Hindu Marriage Act, 1955, sec. 5);

(ii). Marriage-rites and ceremonies\(^{36}\) (sec. 7);

(iii). Right to obtain divorce without proper judicial proceedings\(^{37}\) (sec. 291);

(iv). Adoption of adult and married persons (Hindu Adoption and Maintenance Act,\(^{38}\) 1956, sec. 10);

(v). Mitakshara Coparcenary Property (Hindu Succession Act,\(^{39}\) 1956, sec. 6);

(vi). Joint family properties governed by Marumakkattayam, nambudri and Ahyasandantana customs\(^{40}\) (sec. 7);

(vii). Properties held by Sthanamandans\(^{41}\); and

(viii). Specified impartible estates\(^{42}\) (sec. 5(ii))\(^{34}\).
All the four Hindu law enactment of 1955-56 clarify that “custom and usages” for this purpose include those prevalent, “In any local area tribe community, group or family.” The scope for customary practices is, thus, extremely wide.

These may and often do, differ – among the Hindus, Buddhists, Jains, Sikhs from area to area, tribe to tribe, community to community, group to group and family to family.

Whither uniformity? The Four Hindu Enactment of 1955-56, surely do not bring “more than 80% of citizens” following the Hindus, Budhists, Jains or Sikhs religious under the banner of one uniform law.

It does’nt mean that no uniformity has been effected by these Acts. Many provisions of the Four Acts do uniformity apply to those who are governed by them but quite a few do not; and a very large number among those “more than 80% citizens” are not governed by those statutes at all. It is a fact that there remains considerable diversity in respect of conflicting traditional joint family rules, prevalence of local, law, exemptions to schedule tribes and statutory protection to all types of customs and usages.

So far as, the Muslim Personal Law is concerned, it could not have and did not, remain outside the ambit of the states’ legislative power. Central legislature have occasionally exercised its power to make statutory provision regarding the scope of Muslim personal law^45 administration of waqf,"^46 women to judicial
divorce\textsuperscript{47}, and post divorce rights;\textsuperscript{48} registration of marital transactions and dowers.\textsuperscript{50}

The protagonists of uniform civil code project the issue in such a manner that the minorities, especially the Muslims, feel that it is they who will have to sacrifice their personal law for the sake of Uniform Civil Code. This apprehension is due to the manner of campaign in which it is alleged that the only defect lies in the personal laws of Muslims. We have seen and we will see later that the other religious groups including the Hindus also have discriminating laws and laws which are unequal. So the campaign for a uniform civil code should be carried on in such a way that the minorities should not become apprehensive. Supposing that if the Muslims, Christians and the Parsis were to give up their personal laws abruptly, what could be the substitute for them? Obviously, the Special Marriage Act, 1954, the Guardians and Wards Act, 1886. How could, then, these minorities be expected to adopt the said laws when the majority community has not done ...? If the idea is to impose on Muslims, Christians and Parsis, the Hindu Law Enactments of 1955-56 in the name of Uniform Civil Code, for obvious and legally tenable reasons they can not be expected to digested.\textsuperscript{51} This is the main reason why the Muslims, Christians and Parsis link their respective personal law with their religious identity. They are apprehensive that if a Uniform Civil Code is ever enacted that would mean the total abrogation of their religion based personal laws and the imposition of the terol laws.
They do not want to give up their personal laws for the sake of implementing the mandate of Article 44.

The state can not discard the personal laws of the minorities, which has by its own direct action gifted to the majority community a separate religion based personal law. Doing so will be wholly unconstitutional of course, the state can codify and reform the personal laws of minorities as it has done in the case of majority but neither the personal laws of minorities can be altogether repealed while that of majority community remains intact – protected and fortified by statute nor can the personal laws of the majority despite its codified and reformed shape be a substituted for a uniform civil code so as to be imposed on the minorities.

So for as the question, what is the stumbling block to a uniform civil code is concerned the answer lies with the diverse variety of personal laws – Both codified and uncodified, reformed and unrefomded – applicable not only to minorities but to the majority communities also. Each of such personal laws is a stumbling law who what the constitution call "a uniform civil code through out the territory of India." The state is not at all interested in carrying out the directive principle of Article 44. Custodian of state authorities are continuously practising the policy of appeasement of the majority community through an effective step by step, protection of its religion, communal
customary, tribal and personal laws, and a blow for thwarting a uniform civil code is squarely put on the Muslims only. It is nothing short of fraud.

D. What Does Article 44 Demand?

It is necessary to know the meaning message, import and scope of each and every word of Article 44 to know the exact nature of this article. If we carefully and honestly analyse the provision of Article 44 then we would be able to draw a just and reasonable conclusion. The cautiously selected wordings of Article 44 is very important. Article 44 in our constitution does not direct any law-making body to enact a uniform civil code straight away. It only says that the state shall endeavour to secure a uniform civil code for the citizen throughout the territory. If we pay deep attention to the wordings of the said article following questions arise.

(i) Is endeavouring to secure something the same as directly enacting a law?

(ii) What is the meaning and scope of a ‘civil code’? What does the expression ‘uniform’ stand for?

(iii) ‘Do uniform’ and ‘common’ convey the same meaning and are they interchangeable words?

(iv) Is the Uniform Civil Code to be compulsorily applicable to all citizens of India?
Now we will discuss the meaning of the words endeavour to secure uniformity in civil law and extend of their applicability. Article 44, clearly, does not ask the legislature to enact a civil code, it contains a principle which state should apply in making civil laws. The demands of Article 44 – whatever they are – and the modalities for the implementation both are to be determined in tune with the provisions of part III of Constitution guaranteeing Fundamental Rights – including right to equality before law and equal protection of laws, citizen civil liberties, freedom of individual to profess and practice their respective religions, freedom of religious communities to manage their own affairs and right of sections of citizens to preserve their distinct culture.

Legislative enactment of an all India Uniform Civil Code straight away is not envisaged by the Constitution even at the central or union level. Article 44 wants the government and the legislature to make possible endeavours which may in the long run secure uniformity in the making and application of civil laws. To demand that parliament should straight away enact a uniform civil code goes against the letter and the spirit of Article 44. What should be the rule of interpretation and how the balance between part III and part IV of the constitution should be maintained has been very beautifully explained by the Supreme Court of India in Minerva Mills case. It was observed by the Supreme Court: -

"India represent a mosaic of humanity consisting of diverse religious, linguistic and caste groups. The
rationale behind the insistence on fundamental rights has not yet lost its relevance, alas or not. The Congress session of Karachi adopted in 1931 the Resolution on Fundamental Rights as well as on economic and social change.

The Sapru Report of 1945 said that the Fundamental Rights should serve as a "standing warning" to all concerned that:

‘What the Constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civil rights, equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary application of life. (p. 260).’

The Indian nation marched to freedom in this background. The Constituent Assembly resolved to enshrine the Fundamental Rights in the written text of the Constitution. The interlinked goals of personal liberty and economic freedom then came to be incorporated in two separate parts, nevertheless parts of an integral indivisible scheme which was carefully and thoughtfully nursed over half a century. The seeds sown in the 19th century saw their fruition in 1950 under the leadership of Jawaharlal Nehru and Dr. Ambedkar. To destroy the guarantees given by part III in order purportedly to achieve the goals of part IV is plainly to
subvert the Constitution by destroying its basic structure. Indian Constitution is founded on the bed-rock of the balance between part III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution."^61

These are the settled position of the relationship between the part III and part IV of the Indian Constitution and the directive contained in Article 44 is not an exception.

As to the meaning and scope of civil code an imminent Expert of Hindu law, JDM Derrett observed:

"Civil code throughout the world, suggests a great deal of private law, including contract and Tort."^62

Professor Tahir Mehmood rightly formulated this situation and observed that:

"This is indeed true. There are numerous countries in the world which have no civil codes at all. In many other countries there is in force a civil code which contains all sorts of civil laws (as opposed to penal laws) except family and succession laws. In very few countries there is a civil code which covers also laws of families relations and succession. In most countries family and succession laws are contained in special statutes standing separate from the local civil codes if there any inforce. In view of these various models
available outside India, how do we determine the meaning and the scope of the expression “Civil Code” as used in article 44 of the Constitution? shall be presume that in this provision the terms is just synonym for family code? Is it right to presume so?

The word ‘code’ is used in many different senses. It may mean a single comprehensive statute (e.g. The Indian Penal Code), but it may also refer to the body of several statute dealing with the same subject. It is in this later sense that the term Hindu Code – by which means the four Hindu law statute is enacted during 1955-56. What does, then, article 44 mean? Does it necessarily talk of a family code, which is single (like the Indian Penal Code), or does it leave room for a body of several statutes of family law and succession on the pattern the Hindu code 1955-56.\(^6\)

As far as the word ‘uniform’ is concerned the standard dictionaries of the English language do not translate ‘uniform’ as ‘common’ and vice-versa.

In recent years we have been hearing a lot about the sophistry that the constitution speaks of a Uniform Civil Code but anti-Muslim block wants to introduce a common civil code.\(^6\)

P.C. Chatterjee comments:

“I have to confess that the distinction to ‘uniform’ and ‘common’ in this context is one that beats me.
No examples are provided of a code which may be ‘common’ but not ‘uniform’ or vice versa. For instance, if a Code prescribes that some men may have four wives (Muslims) but others may have only one, would such a Code, be described as uniform? In ordinary language, one would be inclined to say that such a code is not uniform because it does not apply equally to all males. Could such a code be described as common? I would say again that it is not common and for the same reason. But supposing it is contended that a code is uniform if prescribes a rule which applies to a particular limited class only and is not intended to assert anything more.".65

Is it, then, not worth examining what are in fact the requirements of uniformity in respect of a civil code (to the more specific and accurate of a family code)? Does the Constitution talks of a strict and rigid uniformity of family law? Is such uniformity in fact possible. All these questions are indeed worth pondering in the interest of a smooth, peaceful and harmonious implementation of article 44 in a forseeable future. Uniformity, obviously can not be a purposeless goal. The modalities for translating the mandate of Article 44 into action should be decided with the reference to its objects and purposes. What does the law of interpretation provides in such a situation is very
beautifully summed up by a writer:

"Generally a mandatory provision is to be construed strictly, while a directory provision is to be construed liberally. There is no reason to adopt a different line of reasoning in the construction and interpretation of the Constitution. In all such cases one must consider the real purpose of the provision, whether statutory or Constitutional."

To conclude the discussion about the scope of the word uniform used in Article 44. The researcher is fully agreed with the observation of learned author Dr. Tahir Mahmood:

"The word ‘uniform’ here (in article 44) has so far been thoughtlessly regarded as a synonym for the word ‘common’, and perhaps nobody has ever considered why the father of Constitution preferred the former to the latter expression. I think there is difference between ‘common’ and ‘uniform’ – the former meaning one and the same in all circumstances whatsoever and the latter meaning ‘same in the similar circumstances’."

To give the answer of the fourth question that whether the Uniform Civil Code should be applied compulsarily to all the citizens of India. It is necessary that every uniform civil law, if and when enacted, must compulsarily apply to all Indians?
regard the observations made by Dr. B.R. Ambedkar is worth mentioning which he made while concluding the debate on uniform civil code in the Constituute Assembly:

"Nothing would prevent a future parliament from enacting a civil code and making it applicable only to those who voluntarily submit to its provisions."\(^{68}\)

It can safely observed that in our country the personal laws applicable to different communities are 'veriform'. This diversity in personal laws is not only based on religion or religious or group but it also due to the customs of the people. The myth that the Muslim Personal Law is the only obstacle in the procurement of the Uniform Civil Code is totally baseless. In fact the personal laws of the majority community are more veriform than the personal laws of minorities' community. The meaning and scope of Article 44 is generally misunderstanding not only by the laymen but the by law men also.

**Summary**

Uniform Civil Code is the victim of certain misconceptions and realities and it is an irony that the interpretation as well as implementation of Article 44 of our Constitution is not being taken into account in its right perspective.

There are prejudicial attempts on the part of legislature and court both to examine the whole issue from a 'majoritarian'
approach. Such attempts defeat the very purpose of Article 44 for uniformity in personal laws.

India is a large country with diverse personal laws and customs. These diversities are by product of different customs, regions and territorial separation. Again there are specified groups who enjoy special treatment like tribal laws which were allowed to continue even by Constitution of India. Beside that Constitution itself created two privileged class viz., the “Scheduled Caste” and “Scheduled Tribe”. We have a spectrum of personal laws and customs as diverse as nation’s languages, cultures and geographical realities.

There is erroneous quest for Uniform Civil Code simply because Article 44 does not direct the legislature to enact a civil code. It contains a principle basically for “Uniformity” in civil laws.

Whenever Muslim Personal Law is debated it lacks intellectual impartiality. Media reportage, academic analysis and often politician’s view points reflect the vested interests of those concerned. Often Muslim Personal Law is shown as defective and discriminatory.

The question is – what does Article 44 demand? It desires to provide nation’s citizen uniformity in civil laws but applicable on those who voluntarily accept and submit to its provision. Thus, it wants only a shift from veriform to uniform.
References

4. See State Amendments of the Hindu Marriage Act 1955 (Uttar Pradesh, Tamil Nadu); of the Muslim Personal Law (Shariat) Application Act, 1937 (Andhra Pradesh, Kerala and Tamil Nadu); and of the Kazis Act 1880 (Maharashtra).
10. Hindu Marriage Act 1955, Sec. 2(2); Hindu Succession Act 1956; Sec. 2(2); Hindu Minority and Guardianship Act 1956, Sec. 3(2); Hindu Adoption and Maintenance Act 1956.
12. Supra note 9 at 82.
13. Hindu Marriage Act, 1955, sec. 5 clauses (iv) and (v).
14. Id. Sec. 7.
15. Id. Sec. 29(2).
20. Hindu Adoption and Maintenance Act 1956, Sec. 10, clauses (iii) and (iv).

21. See the definition of "Custom and Usage" in Sec. 3(a) of the Hindu Marriage Act 1955 and Sec. 3(a) of the Hindu Adoptions and Maintenance Act 1956.

22. Section 4(d), proviso, added by the Special Marriage (Amendment) Act 1963.

23. Ibid.

24. Supra note 15


27. Supra note 25 at 129.

28. Section 4 class (d) and first scheduled part I, II - Entries 34-37.


32. Supra note 9 at 86.

33. (1995) 3SC 635

34. Supra note 25 at 48.

35. Id. at 47.


37. Id., Section 7

38. Section 10, Hindu Adoption and Maintenance Act, 1956.


40. Id., Section 7

41. Ibid

42. Id., Section 5(ii)
43. Section 3 in all the Acts.
44. *Supra note* 9 at 49.
45. *See* The Muslim Personal Law (*Shariat*) Application Act, 1937, Mapilla Succession Act 1918 (Tamil Nadu, Kerala).
47. Dissolution of Muslim Marriages Act 1939; J&K Dissolution of Muslim Marriage Act 1942.
52. *Id.* at 172.
53. *Id.* at 173.
54. *See* Article 14 of the Constitution of India.
55. *See* Article 25 of the Constitution of India.
56. Article 26 of the Constitution of India.
57. Article 29 of the Constitution of India.
58. *Supra note* 25 at 133.
62. *Supra note* 25 at 177.
63. *Ibid* at 127


67. *Supra note* 26 at 31.