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A Misconception of the Uniform Civil Code and Its Reality

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Abstract
One of the most common misconceptions about the UCC is that Hindus have abandoned their own laws in order to achieve national unity. Another common misconception is that the four Hindu enactments passed in 1955-1956 corrected all flaws in Hindu law, including gender justice. The third myth about the Uniform Civil Code is that Muslims are the only ones preventing the implementation of Article 44 of the Indian Constitution. The fourth common misconception is that Islamic law is anti-gender equality. As a result, Muslim women have the lowest level of legal rights in India when compared to other women. The fifth common myth is that if the Uniform Civil Code is implemented, it will strengthen national unity. The sixth myth is that minorities in India, particularly Muslims, are granted personal laws as part of the Indian Constitution by the British. The final myth about the Uniform Civil Code and personal laws is that all religious communities abandoned their laws to promote uniformity and racial harmony across all states. However, the truth is quite different. It is incorrect to assert that only Muslims oppose religiously motivated changes to personal laws.
In the light of the same the researcher attempts to examine the four fallacies in order to comprehend the concept:

- Personal Law Dimensions
- Uniformity: An Erroneous Approach
- The Great Fallacy About Mohammedan Law
- What does Article 44 require**?**

Keywords: Uniform Civil Code, Myths, Personal Law Dimensions, Uniformity: An Erroneous Approach.

1. INTRODUCTION

Uniform Civil Code is regularly debated for political motives. But, the truth is that most people find these discussions challenging to understand. Everyone can agree on one thing, which is that the issue is serious and requires careful consideration. There are both direct and indirect statements that do not address the entire topic. Researchers are tackling the problem from the perspective of an academician and hoping to identify misconceptions and truths relating to the Uniform Civil Code in order to dispel ignorance that has been intentionally or unintentionally displayed.

As per 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 UCC is that Hindus have abandoned their own laws in favour of national uniformity. Another important myth is that the four Hindu enactments passed in 1955-1956 fixed every flaw in Hindu law, including gender justice. Third myth concerning the Uniform Civil Code is that Muslims are the sole ones preventing the Indian Constitution's Article 44 from being put into effect. The fourth common misunderstanding is that Islamic law opposes gender equality. As a result, when compared to other women in India, Muslim women have the lowest level of legal rights. The fifth common myth is that the Uniform Civil Code would strengthen national unity if it were to be implemented. The sixth misconception is that minorities in India, notably Muslims, are given personal laws by the British as part of the Indian Constitution. The final myth

regarding the Uniform Civil Code and personal laws is that all religious communities have abandoned their laws in order to promote uniformity and racial harmony across all states.

Yet the truth is rather different. It is untrue to say that only Muslims are opposed to changes to the personal laws that are based on religion. If we examine the history of the Hindu Code Bill, we will discover that the upper caste Hindus, constitutional scholars, and religious scholars of Hinduism all fiercely opposed it. It was even permitted for the first Hindu Code Law to expire. The reason the then-government of Pt. Jawaharlal Nehru overcame all resistance to get the Bill through Parliament, despite a threatened veto by President of India Dr.Rajendra Prasad, was due to the inhumane and demeaning plight of Hindu women in their ancient laws. Several anti-women and anti-secular laws were introduced into four Hindu Acts as a result of the threat by Dr. Rajendra Prasad and the vehement opposition by the upper caste Hindu, especially Brahmin.

In order to understand the concept, the researcher tries to examine the four fallacies:

- Dimensions of Personal Law
- Uniformity: An Erroneous Approach
- The Great Fallacy About Mohammedan Law
- What is required under Article 44?

Various Dimensions of Personal Laws

(i) Diversities based on region and territory

It is a common misconception that different groups of Indian residents are subject to various personal laws because they practise several religions, each of which has its own set of rules. In actuality, neither all religious adherents in India are subject to the same laws, nor are all adherents of a religion from which a law is derived subject to the same personal laws. The legislation varies from one region to another and from one territory to another, and it frequently applies differently depending on the situation.

The Constitution itself places legislation of personal laws, including its family laws, in list III (concurrent List) which restricts the possibilities for national uniformity as envisioned in Article 44. As a result, laws in these areas can be created by both the State legislature and the Parliament. Also, state legislatures frequently add new provisions to parliamentary legislation on family law issues.

(ii) Diversities based on specified group of persons

Several kinds of people fall outside the scope of statutory law's executive action because they are considered exceptions to the ordinary Indian citizen, according to personal law enactments. This phenomenon, where some categories of people are exempt from the application of statutory law in aspects of their personal law, is practically nationwide. This is what causes the complex differences in the area of personal legislation.

According to the Indian Succession Act of 1925, any specific race or tribe in a state may be exempted from the Act's applicability on the grounds that doing so would be "impossible" or "inexpedient" by publishing a gazette notification. This authority has previously been used to the benefit of Coorg Christians, a few Christian races in Assam, and a number of Christian tribes in Bihar and Orissa.

The Indian Constitution established the "Scheduled Caste" and "Scheduled Tribe" as two favoured classes, allowing the long-standing custom of upholding tribal and sectarian rules to remain after independence. The Scheduled Tribes have received unique exemptions from these two privileged classes, but none of the Scheduled Castes have received such special exemptions under any personal law laws. All four of the 1955–1956 Hindu law enactments are thus completely unrelated to any of the Scheduled tribes. The legality of several of these Acts' non-applicability to particular tribes in Assam, Bihar, and Orissa has been established.

Due to the fact that these Acts nearly completely cover family law and succession, local tribal practises are completely maintained. And because certain tribes are concentrated in specific regions of India, this formal continuation of their customs which are greatly at odds with common law and practice adds a fresh chapter to the country's territorial diversity in its personal laws.

(iii) Diversity depending on usages of customs
One discovers an intriguing and pertinent feature of diversity in the four Hindu-Law enactments of 1955–1956 that is based on the customary law of Hindus, Buddhists, Jains, and Sikhs. Particular requirements relating to Hindu, Buddhist, Jains, and Sikh practises that conflict with general statutory provisions are fully protected by law under the terms of the relevant enactments. Among the practises and institutions that continue to enjoy this level of protection are:

- those that violate the laws governing sapinda relationships and forbidden degrees in marriage;
- Ritual replacement for "Saptapadi" in customary marriage
- Conventional divorce;
- The practise of adopting older, married children.

Every "local area, tribe, community, group or family" of Hindus may practise the customs listed under each of the aforementioned heads. Notwithstanding the fact that the term "law" in Article 13 of the Constitution is expressly extended to include custom and usage having the "force of law," it is possible that no court has ever disapproved of this broad-based protection of diverse custom.

Not only does Hindu law keep custom as an exception to the general rule, but other laws also safeguard practises that go against the letter of the law. As an illustration, the legislation governing civil marriage did not have any statutory provisions relating to the "prohibited degrees" and was not affected by opposing traditions. Nonetheless, the law was changed after nine years to preserve practises that violate the prohibition on "prohibited degrees" in marriage. Unlike the Hindu Marriage Act, which only recognised custom's supremacy in this regard if it applied to both parties to the marriage, the amended law gives customs a larger role to prevail and be recognised. It would suffice in this case if it applied to "at least one of the parties" to the marriage.

The Muslim Personal Law (Shariat) Application Act, enacted in 1937, also includes clauses that address how custom and usage are used in wills, bequests, and adoptions. These rules are against Islamic law, yet they were included in the Act for solely political purposes despite the fact that they are unjust. In Pakistan, the Pakistan Muslim Personal Law (Shariat) Application Act, 1962, interestingly, abolished such a clause. The ultimate effect of the exemption to the general law is that there is still a dyarchy in regard to the law that applies to Muslims in the primarily Muslim Union territory of Lakshadweep and in the Malabar area of Kerala.
In our nation, there is a fairly wide range of personal laws. Its variance is founded on other factors rather than on religious ones. Inter-territorial and custom-based diversity in the area of personal law, which has its roots in the distant past, could not be rushed in the throes of liberation movement.

Right To Religion And Judicial Trend
Although India's constitution does not specify religion, it has been established that it need not always be theistic. The freedom of religion granted by Article 25 does not just apply to Indian citizens, but to all people, including aliens and people who exercise their rights on an individual or institutional level. The Indian constitution guarantees both the right to freedom of religion and the right to practise one's religion openly. Religious practises, rites, ceremonies, and functions are all essential components of religion; they go beyond simple doctrines of belief.
The Indian Constitution's Articles 25 and 26, which deal with the right to freedom of religion, make the definition of "Religion" a crucial subject. Most definitely neither an individual, a group of believers, nor the government should define it. Due to the difficulty of defining the term "religion," the courts have been given the obligation of doing so.

In cases involving the Uniform Civil Code, the judiciary has defended gender justice as always through its numerous judgements.

It is also a source of sadness that Article 44 of our Constitution has remained a dead letter, the Supreme Court stated in the Mohammad Ahmed Khan v. Shah Bano Begum case, popularly known as the Shah Bano case. Gender justice required a broad interpretation of the law, even if the Muslim fundamentalists who made this decision were highly critical of it. The federal government later passed the Muslim women's (Protection of Rights on Divorce) Act of 1986, which prohibited Muslim women from exercising their right to maintenance under section 125of the Criminal Procedure Code. The activist was right to call it unquestionably a step backwards in her criticism.

Yet, in Ahmadabad Women's Action Group (AWAG) v/s Union of India, a PIL was filed to challenge provisions of Hindu, Muslim, and Christian statutory and non-statutory law that discriminate against women. The Supreme Court adopted a more cautious stance in this instance, holding that personal laws entailed state policy considerations with the elimination of gender discrimination, which the court would not typically address. The ruling drew criticism for essentially giving up on its duty to maintain the fundamental equality of personal laws among India's many communities with regard to gender issues.

The Supreme Court of India adopted a similar stance in Lily Thomas v/s Union of India and others, concluding that while the need for a uniform civil code is hardly debatable, it can only be implemented if society as a whole has correctly constructed the social environment. The researcher has so noted that Articles 25 and 26 of the Constitution guarantee freedom of conscience, freedom to proclaim, practise, and spread one's choice of religion, as well as freedom to oversee religious affairs. Article 44 does not seek to abolish current personal laws or impose a uniform civil code on all citizens. In order to unite the nation and achieve true secularism, it is necessary. Several laws pose a serious threat to the country, so change is necessary. The scope of the Uniform Civil Code encompasses not only the issue of gender equity, but also how a country achieves equality by tolerating its own diversity.

The Kerala Hindu places of public worship (Authorisation of Entrance) Rules, 1965 were invalidated by the Supreme Court in the Sabrimala Temple Case by a 4:1 majority, allowing women of any age to visit the temple and worship the deity by giving the following justification:

- The Constitution safeguards religious freedom in two ways: (A) Article 25 safeguards a person's right to profess, practise, and spread a religion; and (B) Article 26 ensures that every religious denomination is protected in its ability to conduct its own business.
- The Sabrimala case demonstrated a conflict between the group rights of the temple officials in maintaining the severe rules of the presiding deity and the individual rights of women in the 10 to 50 age bracket to worship.
- The Travancore Devaswom Board (TDB) asserted that because they are a denomination, they are entitled to the right to set their own norms. The Court, however, ruled that followers of Ayyappa do not belong to a distinct religious group.
- The court determined that the Hindu religion does not require men to be married to women.
- The decision upholds the notion that, even in religious disputes, individual freedom takes precedence over claimed group rights.

Consequently, it can be seen that the controversy surrounding the Sabrimala Temple presents the court with a great chance to review and change the long-standing customs in the nation that discriminate against a particular group of the population. The Court should consider more than just the restriction of women's right to exercise their religion in public spaces.

Uniformity: A Misguided Strategy

Part IV of the Constitution contains Article 44, which outlines "Directive Principles of State Policy". The three points in Article 37, the most significant Article that controls this section are as follows:

- No court shall have the authority to enforce the principles in part IV.
- This principle will nevertheless be vital to the nation's government; and
- The state shall be required to use these principles when enacting legislation.

Article 44 expressly does not request the enactment of a civil code; instead, it specifies a concept that the state ought to follow when enacting civil legislation. According to Article 44, "uniformity in civil laws" is the fundamental tenet. By drafting rules governing civil transactions, the state is required to adopt these principles whenever, everywhere, and to the greatest extent practicable.
It seems odd that there is no discussion at all of the interpretation or application of Article 44 online, which states that all members of a specific community must be subject to the same laws throughout India. Nobody calls for a single law to apply to all Hindus in all situations and across the entire nation.

The continued existence of the Hindu customary law is not of importance to anyone. The Muslim Personal Law, which the proponents of uniformity seek to be repealed by a single piece of legislation, has been the target of law.
The implementation of the uniformity principle when drafting civil laws is often essential to the governance of the country; nevertheless, if the state is unable to do so due to any valid reason, no court in the country can in any way have the principle enforced. The state is entirely and alone free to choose when, how, how, and to what extent it will use the idea of uniformity when enacting civil legislation, according to the constitution.
Hindu law has been attempted to be applied to non-Hindus in place of both the legislature's and the court's own legislation; this is typically done under the pretence of attaining family law uniformity. One example is the general ban on marrying a cousin (derived from Hindu Laws) in the Special Marriage Act of 1954.

It is claimed that, in the sake of obtaining "Uniformity" in civil laws, it is profoundly immoral to force the laws or practises of one society upon another. By no means does the constitutional notion of civil law homogeneity imply the forcible encroachment of one legal culture over another or the ultimate suppression of that culture.

The Myth of Muslim Personal Law

There is a common misconception that only Muslims have personal laws and that these laws act as a roadblock to enforcing Article 44 of the Indian Constitution. Muslims are accused of blocking the implementation of Article 44 because they refuse to give up their personal law in favour of a Uniform Civil Code. This idea is erroneous.

In India, there are numerous personal laws that apply to various communities, including Muslims and non-Muslims. These are what they are:-

- Hindu personal laws are generally but not fully codified (and apply similarly to Buddhists, Jains, and Sikhs);
- Whenever governed by law or precedent, Hindu, Buddhist, Jains, and Sikh customary law;
- Hindu and other tribal law;
- Christian Personal Law, revised and codified, is number four.
- The codification and reform of Parsi personal law;
- Jewish Personal Law, which is entirely unreformed and uncodified;
- Muslim Personal Law, which has only partially been codified.

Justice Kuldeep Singh also vehemently argued for the inclusion of Hindus, Buddhists, Jains, and Sikhswho together make up more than 80% of Indian citizensunder "one united law" in the Sarla Mudgal Case.

This question has a negative response.

Hindus, Buddhists, Jains, and Sikhs are still not subject to a single set of laws, it is a truth.

- The four laws enacted by the Hindu community in 1955–1956 do not fully encompass Hindu personal law. Hindu law still has several essential qualifications, such as the laws governing joint families, co-parceners, and property division. The traditional Hindu law is still used in certain situations. In general, there are two schools of Hindu law: Mitakshara and Dayahhaga. Thousands of property-related matters are still being adjudicated by the court today in accordance with the tenets of the aforementioned institutions.
- The four Hindu laws passed in 1955–1956 are applicable uniformly across the entire country of India. However there are still old Hindu customs and laws from the 19th century in effect in Goa and Daman Diu. The majority of Hindus in Pondicherry have chosen to be governed by the French Civil Code. In a similar vein, Tamil Nadu and the states of Uttar Pradesh and Jammu and Kashmir have amended the Hindu Code. Special Hindu Law statutes have been passed in Andhra Pradesh and Kerala to supplement the federal laws.
- The Hindu matriarchal households in the southern Indian states of Andhra Pradesh, Karnataka, Kerala, and Tamil Nadu are governed by a number of different customary laws rather than the Hindu code.
- Article 371A of the Indian Constitution, as well as legislative provisions and court rulings, fully preserve local customs and use in North-eastern states like Nagaland, Mizoram, Meghalaya, Arunachal Pradesh, and Sikkim.
- Sections 2- 3 of the four Hindu enactments namely Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Minority and Guardianship Act 1956 and Hindu Adoptions and Maintenance Act, 1956 give different tribes the freedom to practise their own customs, which vary from tribe to tribe and location to location. Any tribal members who practise the Hindu, Buddhist, Jain, or Sikh faiths are totally excluded from the four Hindu law enactments.

According to all four of the Hindu laws passed in 1955–1956, "custom and usages" for this reason include those that are common "In any local area tribal community, group, or family." The range of customary practises is thus very broad.
They may, and frequently do, vary from Hindus to Buddhists to Jains to Sikhs according on the region, tribe, community, group, and family.
The Muslim Personal Law could not have and did not remain outside the purview of the legislative authority of the states. The central legislature has periodically used its authority to enact laws governing Muslim personal law, including the administration of waqf, women's rights to judicial divorce, post-divorce rights, and the recording of marital transactions and dowers.

The proponents of the Uniform Civil Code portray the problem in such a way that minorities, particularly Muslims, believe they will be forced to give up their own personal laws in order to advance the uniform civil code. This anxiety is brought on by the way the campaign is being run, which claims that Muslims' personal laws are the only thing flawed. Other religious groups, including Hindus, have discriminatory laws and unequal laws, as we have seen and shall see in the future. Thus, it is important to continue the push for a uniform civil code in a way that prevents minorities from becoming uneasy.

As it directly created a special personal law based on religion for the majority population, the state cannot ignore the personal laws of minorities. The majority community is still intact and is protected by law, so the state may codify and reform the personal laws of minorities, just as it has done in the case of the majority. However, neither the majority's personal laws nor the minority's personal laws may be substituted for a uniform civil code in order to impose themselves on the minority. It would be completely unconstitutional to do so.

What is Required by Article 44?

It is necessary to comprehend the precise meaning of Article 44 as well as the message, significance, and breadth of each and every term used in the text. If we carefully and honestly evaluated the Article 44 provision, we would be able to come to a just and reasonable conclusion. Article 44's precise wording is very important. Article 44 of our Constitution does not mandate the rapid adoption of a uniform civil code by any legislative body. It simply states that the state must try to make sure that everyone in the territory has access to a Uniform Civil Code.

The Constitution does not mandate the rapid creation of an all-Indian Uniform Civil Code, not even at the central or union level. In order to ensure uniformity in the creation and enforcement of civil laws in the long run, Article 44 calls on the government and the legislature to take all reasonable steps. Demanding that the parliament immediately pass a standard civil code runs against the Article 44's intent.

The Supreme Court of India in the Minerva Mills case has very effectively described what the standard of interpretation should be and how the harmony between Part III and Part IV of the Constitution should be preserved.

The term "code" has several different meanings. It can refer to a single comprehensive statute (like The Indian Penal Code) or to the body of multiple statutes that cover the same ground. The phrase "Hindu Code" is used in this more recent sense to refer to the four Hindu law statutes that were passed in 1955 and 1956.

Standard English dictionaries do not render the word "uniform" as "common," and the opposite is also true. Then, would it not be useful to look into what constitutes uniformity in a civil code—to the more detailed and accurate of a family code? Is there any reference of a stringent, unified family law in the Constitution? Do such uniformities even exist? In the goal of a quick, peaceful, and harmonious implementation of Article 44, all of these concerns are worthwhile taking into account. It is obvious that homogeneity cannot be a pointless endeavour. The modalities for putting Article 44's mandate into action should be decided with reference to its objects and purposes.

Is it necessary for any Uniform Civil Law, if and when enacted, to apply to all Indians?

In order to answer the above question, personal laws applicable to different communities in our country are in a varied form as can be seen. This difference in personal laws is a result of people's culture as well as religion and other religious and racial factors. It is untrue to claim that Muslim Personal Law is the only issue preventing the adoption of the Universal Civil Code. In actuality, the personal laws of the dominant community are more uniform than those of the minority community. The meaning and scope of Article 44 are widely misunderstood, not only by laypeople but also by lawyers.

2. CONCLUSION

It is ironic that the interpretation and application of Article 44 of our Constitution are not being taken into consideration in the correct context because the Uniform Civil Code is the victim of certain misconceptions and realities.

Legislative and judicial attempts to investigate the entire matter from a "majoritarian approach" are harmful. Such initiatives go against Article 44's fundamental mandate for uniformity in personal legislation.

India is a sizable nation with numerous different particular laws and customs. These variations are the result of varied regional and territorial divisions, customs, and practises. Once more, certain tribes receive preferential treatment; one example is the continuation of tribal laws despite the Indian Constitution. In addition, the Constitution created "Scheduled Caste" and "Scheduled Tribe," two privileged groups. We have a wide variety of personal laws and practices that reflect the diversity of the languages, cultures, and geographical contexts of our respective nations.

Because Article 44 does not compel the legislature to pass a civil code, there is a mistaken search for a uniform civil code. It effectively states the "Uniformity" premise for civil law.

There is a lack of intellectual objectivity when discussions about Muslim Personal Law are taking place. The entrenched interests of individuals concerned are frequently reflected in media coverage, scholarly study, and political perspectives. Muslim Personal Law is regularly criticized for being unfair and faulty.

What precisely does Article 44 demand is the question. Only those who freely accept and submit to its terms are intended to benefit from its goal of achieving civil law uniformity for citizens. It merely wants to move from various types of personal laws to uniform personal laws as a result.

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