
GOA CIVIL CODE: IS IT UNIFORM?

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I. PRELIMINARY

In an endeavour to promote a uniform code of rules governing different adjudicatory processes, the Indian Constitution in Article 44¹ lays down provisions that ‘the State shall endeavour to secure for the citizens a Uniform civil code throughout the territory of India.’² Since 1997, the Bhartiya Janata Party has been affirming the Portuguese Civil Code³ in their agenda as an inspiring example of Uniform Civil Code in exercise which could be implemented pan-India. While legal scholars and people across the country are divided on the positive and negative aspects of this Code, very few people are aware about the nuances that the Common Civil Code has. It was instituted in 1867, under the Portuguese rule for about 450-odd years. Given the multiplicity of personal laws that govern different religious communities in India, it has been time and again contended that there is a dire need for a Uniform Civil Code as a universal code in guaranteeing rights and justice. Owing to multiple elements of gender disparities between men and women, and male-centric personal laws, it is a popular belief that the UCC is a promising answer to the lacunae of injustice in personal laws, a flag-bearer of equality, women empowerment and justice. However, even as we regard for the umpteenth time the UCC in Goa to be a model for the rest of the nation, touting it as the sovereign remedy for injustice and violation of women rights, it is imperative to deconstruct and analyse the Code in order to reveal whether it really is providing equality as proclaimed? Is the Code entirely uniform in its provisions? Why has it been retained in Goa after all these years? This paper will briefly analyse marriage, divorce, and property succession laws of the Goa Civil Code and seek how far they have been successful in perpetrating principles of uniformity.

II. MARRIAGE LAWS

Akin to the difference in marriage laws for the rest of India based on religion, marriage laws in Goa are based on a three-tier differentiation: for Catholics who marry under the Church, for

¹ The Constitution of India 1950, art. 44.

² Ibid.

³ Government of Goa, 2018, Portuguese Civil Code, 1867, Panaji.

Catholics who choose to marry outside the Church and those who are non-Catholics.

For Hindus, The Code of Gentile Hindu Usages and Customs of Goa⁴ applies specifically to the institution of Joint Family. Interestingly, Catholics who marry under the regulations of the Church are exempted from divorce legalities under the Civil Code. A proximate evaluation of the differences that arise under the umbrella of ‘uniformity’ is thus needed. In an attempt to reconstruct the existing provisions of the Code, a revelation that the Goa Civil Code is not strictly uniform in its application and has differential application and provisions for specific communities is observed. Let us take a look at the laws around marriage and its procedure of the Code. The GCC contains provisions for family law, specifically marriage, in articles 1056 to 1239. One of the peculiar characteristics of Personal Family Law in the Code is the notion of marriage originally incorporated in it. As per Article 1056⁵, marriage is a contract between two persons of different sex with the aim of legitimately constituting a family⁶. The concerned provision illustrates the Code’s inherent attempt to follow the principles of secularism, which consciously disengages from any reference to marriage as a sacrament, which is seen in the Hindu Marriage Act. Article 1057⁷ of the GCC requires registration of marriages in the State. Upon a closer inspection of this provision, one can observe the lack of uniformity on the grounds of solemnizing marriage. The provision differentiates on procedure for registration among Catholic and non-Catholic marriages.

Additionally, the intent of marrying has to be recorded in Goa, after which the partners proceed to sign the marriage deed. It is interesting to note that while signatures in Churches are enough for a Catholic couple to be married as per civil registration, the same does not apply to non-Catholics. In *Seema v. Ashwani Kumar*⁸, the Court observed the reason behind compulsory registration of marriages in tackling with child marriages. While the attempt to address this social evil and curb it in their capacity must be applauded, such compulsory registration comes with its own challenges.

When we explore these challenges, we realise the technical intricacies that develop with such registration process and the subsequent differentiation for different sections of the same

⁴ Code of Gentile Hindu Usages and Customs of Goa, 1880.

⁵ Government of Goa, 2018, Portuguese Civil Code, 1867, art. 1056.

⁶ Ibid.

⁷ Ibid, art. 1057.

⁸ Transfer Petition 291 of 2005.

society. For example: what many non-Catholic women fail to accord is that a second signature is required for solemnisation of a marriage if you're not a Catholic. In my opinion, in a country like India, where men and women are not socialised in their cultural surroundings into being familiar with the procedures of registration of marriage, there can be instances where one is deceived into the belief that they have been registered for a marriage, when they infact are not as they have not appended the second signature which is essential for recognising a marriage legally.

Additionally, the Shariat Application Act also does not apply anywhere in Goa, and as a result, Muslims are legally bound by the Code itself as well as by parts of traditional Hindu law. This then raises not just communal obstacles rendering a whole community devoid of their personal laws made inclusive, but also gives rise to an ambiguous application of a mixture of laws for one community, leading to complexities in upholding a 'uniform' ordeal. A unique revelation is made under Article 1090⁹ of the Goa Code, wherein marriage cannot be nullified on the ground of religion.

However, not all is lost in transition. In perpetrating uniformity, the Code seeks to promote monogamy such that Muslim men are deterred from the practice of polygamy. For followers of Islam, there is no provision for verbal divorce.¹⁰ This is a welcoming stipulation, considering the ill-use of verbal divorces affecting women and their status in Muslim personal laws. Ramakant D. Khalap, Former Chairman of the Goa Law Commission, avers that the common belief that Family Laws of Goa are ubiquitous or universal in all aspects is a common misbelief. The same was exposed through Report No. 21, "Protection of Institution of Marriage Bill 2012¹¹". The Code permits the Catholics to get married in Church but subsequently devoid the Jurisdiction of Civil Courts in separation and annulment of marriage. The law offers excludes the jurisdiction of the High Court in examining the Decrees of Canonical Courts in its constitutional validity or public policy. It is indeed astonishing that such a metachronism of laws continues to operate even after 50 years of liberation of a validly constituted Law Reform Commission."¹²

Another bizarre provision is that provided by Article 3 of the Decree of Gentile Hindu Usages and Customs of Goa, 1880. This Act says that a Hindu husband can take an additional wife in

⁹ Ibid, Article 1057

¹⁰ Supreme Court of India. 2019. *Jose Paulo Coutinho vs Maria Luiza Valentina Pereira*, September 13.

¹¹ Protection of Institution of Marriage Bill 2012

¹² Law Commission, Goa. 2012. Reports of Law Commission. March 05.

a situation where his wife is unable to conceive a child if she has attained the age of 25. There's more that surprises us. If the wife has attained the age of thirty years without having a son, this provision would work for the husband. Similarly, in Hindus, the practice of bigamy is allowed in absence of a male heir as provided by the Codes of Usages and Customs of Gentile Hindus of Goa. There is also an unjust provision surrounding adoption, where, in the absence of a male heir, the law permits only males to be adopted by Hindus. This issue has been challenged and is pending before the Bombay High Court. The provision, clearly, is in conflict with both the Indian Penal Code and the Hindu Marriage Act which doesn't support bigamy in any scenario whatsoever. In my opinion, while the Code remarkably boasts of uniformity, one must be able to differentiate between uniformity of law and uniformity of equal laws. Why must then, there be differential stipulation in matters of adoption is perhaps something that needs an explanation. A general opinion owing to the mentality surrounding male lineage and the orthodoxy of gender discrimination is that such anomalies were made to incorporate the Hindu men who wished to retain the 'Hindu undivided family' to circumvent fragmentation of land and affirm their lineage. What is surprising to me is how the Code ambiguously introduces the legality of polygamy, by putting women at a suffering pedestal where, in failure to deliver a 'male' child, she could be lawfully abandoned by her husband. These provisions, like those banning polygamy and verbal divorce among Muslims, are on one hand reflecting the progressive development of society, while such as mentioned above in fact nullifies the holistic attempt of law to be gender supportive.

III. PROPERTY RIGHTS

Under the 1867 Code, Article 1108¹³ provides a communion of assets¹⁴ to be formulated among spouses enlisting all their combined assets brought before the marriage or acquired thereafter the marriage. However, Article 1117¹⁵ gives the power to administer such assets only to the husband. To look at this as a rather gender-biased provision is one thing, but to question this in that it gives wide powers of administering combined assets of both spouses is essential and needed as it defies uniformity of rights offered to citizens guided by the Code. Such a provision vests an authority only to the husband. Interestingly, this provision is uniformly applicable to all communities. The question which should then bother those who unequivocally call this Code uniform, is if this is the uniformity to desire for where one gender is dominantly

¹³ Ibid, Article 1108.

¹⁴ Ibid.

¹⁵ Ibid, Article 1117.

privileged across all communities? Albertina Almeida, in her article¹⁶ on the analysis of property rights in Goa highlights that the understanding in Goa is that ownership and control are separate elements of sharing property. While they might be shared equally, they may not be controlled or managed equally by both partners. The gendered stereotype of offering power to 'manage' property may thus lead to premises of utilising it without the wife's consent.

Interestingly, the 1867 Code offers directions for ante-nuptial agreements, by which different obligations and clauses could be agreed by partners with respect to their assets. For example, by stipulating that each spouse would keep as his or her personal property the assets acquired before the marriage or even a complete separation of assets. A close look at Article 1096¹⁷ reveals the nature of such acts which offer stipulation of assets to be lawful by either party. Indeed, a noteworthy element of the Code which is ignored in other personal laws governing assets of partners in a marriage. Thus, while provisions around marriage laws of the Code do contain some arbitrary stipulations, not all is sacrificed. In this, there is a remarkable freedom garnered to spouses in pursuance to their patrimonial relations, which seems to be inspired by the prevailing economic liberalism which existed at the time of its adoption.

In analysing Article 17¹⁸ of the 1880 Code, one observes how no individual shares are offered in a partnership of a joint family, such that all assets owned by the Joint Family, as well as anything acquired by any member thereafter, are deemed be a common asset and are managed by the Head of the Family. The communion created by marriage under the Civil Code does not comprise assets that were acquired or earned by the offspring of the couple, as in the Hindu Joint Family. Within a legal class of heirs, distribution of assets is equally done between brothers and sisters. This is one of the relieving provisions such that inheritance is offered equally. The general connotations of the law is touted and presumed to offer gender based equality in inheritance rights, though not without limiting infringements. Unlike the Hindu Succession Act that garners a wide scope of testamentary powers, Article 1784¹⁹ of the Code forbids allocation of more than half of the assets through a will.

The provision is similar to Muslim Personal Law that pronounces that a Muslim cannot make a will of more than one-third of his property and two-thirds must go to their legal heirs. However, when we take a look at the Goa Succession, Special Notaries Inventory Proceedings

¹⁶ Almeida, A. 2016. Goa's Civil Code Shows That Uniformity Does Not Always Mean Equality, *The Wire*.

¹⁷ Ibid 1867, Article 1096.

¹⁸ Ibid, Article 17.

¹⁹ Ibid, Article 1784.

Act²⁰, as accorded by Section 52, the surviving spouse in a marriage is placed at the fourth number in the order of preference of legal succession, below the deceased's descendants, ascendants, and siblings and their children. A question to then ask is, if the existing dilemmas on the introduction of UCC are to be addressed, does the Hindu right prepared to have such a provision in the UCC as and when it is enacted? Article 1876²¹ of the Goa Code must also be discussed in this light, in that it disentitles a legal heir from the branch of inheritance upon refusal to maintain their parents without good reason. The application of this, and to prove the expression 'good reason' then becomes ambiguous in the sense of lacking clarity and basis of evaluation. Subsequently, there are many uniformly applicable provisions, as, for example, the right to will for a married spouse is limited to half share in the property with the consent of both parties involved. In my opinion, this at least ensures that couples cannot will away their entire property in preference of the male child. In comparison with the rest of laws that govern India where there is a general practice in concept of matrimonial property ending up being in the names of males, in Goa, if nothing is explicitly mandated at the time of marriage, the default system is the communion of assets, which means that upon marriage, couples will hold all assets which they possess each or jointly acquired before or after marriage as co-owners of property.

IV. DIVORCE LAWS

Divorce laws in Goa are not uniform across all religions. Divorce They vary in the nature that a Hindu couple can be granted divorce only on grounds of adultery. While upon judicial separation, it is already discussed how there is distribution of assets equally between the spouses, owing to Article 1121²² and 1123²³, what needs attention is that married couples do have an option of exemption out of this default system of communion of assets at the time of marriage, which indefinitely guides them to abide by the stipulations of the Code. A problematic situation, however, arises in cases where an individual's family does not have property of their own. This would mean that where a husband does not have ownership rights in the property, the division of such, at the time of divorce between a couple would result in the woman getting nothing. The Code, thus lays stark emphasis on individuals as a holder of the rights in taking the right of property as the basis and origin of all other rights.

²⁰ Goa Succession, Special Notaries Inventory Proceedings Act, 2012

²¹ Ibid, Article 1876.

²² Ibid, Article 1121.

²³ Ibid, Article 1123.

Under the Code, Muslim men can neither practice polygamy nor is verbal divorce legally recognised by the State because no such provision exists in the Code. The non-applicability of Muslim Personal Law Application Act, 1937 to the State of Goa does raise confusions in the nature of uniformity practiced. However, the restriction on verbal divorce and ban on polygamy gives hope towards tackling the abandonment of women by their husbands, a problem which was observed owing to the evil practice of Triple Talaq under Muslim law. A rather perplexing principle as observed in Article 1204²⁴ allows the husband to get a divorce if adultery is committed by the wife, but the wife can get a separation only if the husband commits adultery with a public recognition and if he keeps a mistress in the matrimonial home or abandons her. An initial glance at such a provision can be seen as daunting to the status of women. How are laws which aim to be uniform work differently for different gender without placing one dominant over the other? Does this not challenge the 'equalitarian' principles of natural justice? While the badge of honour in ensuring uniformity through a Code is carried, changing unjust and unequal provisions is necessary to facilitate the vision of this uniform code. Retaining privilege to men can trump substantive rights which are guaranteed by the Indian Constitution, and so, reforms in the existing Code must be addressed.

V. CONCLUSION

The Code is a mammoth law with various provisions that require the herculean task of judicial interpretation. A departing remark that must be remembered is that the Code exists in Portuguese language and requires translation in English. This sometimes leads to setbacks on the front of judges leading to certain legal intricacies. The way the term 'uniform' is attached to the Portuguese Civil Code, it reflects a chimera of a situation where uniformity is being equated with equality. It is essential to reiterate that while laws can be uniformly applicable to all in respecting women's rights, they can also be uniformly applied to all communities in disregarding them. In simple words, they can also be uniform in widening the existing gap and perpetrating discrimination. Conclusively, the Goa Civil Code proves that the bare existence of a legal stipulation does not always equally and uniformly guarantee equal social relations between genders in the society. My conclusive takeaways from analysing these provisions is that while Goa's Uniform Civil Code is not without its flaws and disparities, it is still a noteworthy blueprint, if amended to repeal gender biased provisions, of what India could envision if UCC was to be applied in future. The uniformity factor, strictly, can be scrutinized

²⁴ Ibid, Article 1204.

but with other laws mostly governing the State under a single Code, one can say that while some provisions are uniform in the essence of the Goa Civil Code, it is not entirely a legislation built to address equality and uniformity, as it comes with its own challenges in doing so.

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