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# Goa's Civil Code is not as Uniform as it Seems

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## ABSTRACT

*The meaning of Uniform civil code is that the same code should be applied throughout the country without discriminating on the basis of religion or it can be said that the all the religions should be governed by the same code rather than different Personal Laws. Uniform Civil Code is talked about in the Article 44 of the Constitution of India and it is not justifiable it is as “the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India”. Uniform Civil Code should be about gender justice and equality without giving preference to any religion and making different provisions for different religions. It should be just and fair and also should not hurt the sentiments of any religions. The Portuguese Civil Code do not meet the requirements of the Uniform Civil Code as it has different provisions for Christians as compared other religion and different provision for Hindus as compared to other religions. It also has provisions for women against the spirit of the Constitution of India and it should not be considered as the Uniform Civil Code as it is in contradiction to the Constitution of India and in that civil code the men are given rights which work against the women.*

## I. INTRODUCTION

Uniform Civil Code is when there is one law or one code for all the citizens of the country to bring uniformity. When the framers of the Constitution was dealing with Article 44 that is in Part IV which is Directive Principle of State Policy had dreamt and expected that the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territories of India but no such action has been taken into that direction. Article 44 says that there should be Uniform Civil Code since this article is in Directive Principle of State Policy and they are only guidelines and not mandatory as they are not justifiable as Part III that is fundamental rights and Directive Principles has asp-rational goals. The need to insert Article 44 was that a secular republic needs a common law for all citizens and not a differentiated laws and also that there should be Gender Justice.

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The personal laws are based on the religious customs and beliefs of different religions and are therefore not consistent and the Uniform Civil Code aims to replace the fragmented laws and bring uniformity in the country and as it come under Article 44 of Part IV so the courts cannot enforce that article.

The main opposition that the Uniform Civil Code is that it clashes with the principle of secularism so many people believe that by adopting the Uniform Civil Code can lead to the domination of one religion.

It can be said that just code will be better than the uniform civil code. Constitution is supreme so if we from progressive interpretation will not do gender justice then the Uniform Civil Code will be imposed and the law which is imposed is not complied with properly as it does not work well on the ground level. That is why the Muslim Community should have progressive interpretation on these laws and to make them compatible with the constitutional norms as if this initiative will be in internal law reform then it will work better, rather than imposed by the authorities as a normative change in law which do not bring any social reform or it can be said that they fail in doing so.

Judiciary should not get involved in the policy making decisions but still some people are using Supreme Court's forum to win political battles by the way of Public Interest Litigation but should not allow it, as it is the decision of the government but in the past 70 years there has been no such concrete step taken towards Uniform Civil Code as no committee sat on the matter of uniform civil code and no draft has been circulated regarding that. No one knows that when will the Uniform Civil Code will be made and how, but it can be assumed that all the good provision will be taken from every personal law. When the Hindu Code Bill was to be made the special committee was made 4 years prior to the Independence. In 1946 when Hindu Code Bill came then opposition Hindus only and they opposed to that extent that even after independence the law minister Dr. B.R. Ambedkar introduced it and it was said that he is a Dalit and he is taking revenge from the upper castes. When there was a debate in Lok Sabha then 25 out of 27 people opposed the Hindu Code Bill. In 1952's elections the Nehru's opposition fought against that Hindu Code Bill will not come and in "Geeta Press" papers it can be observed that 72 public meetings and protests were organised within a year and it was said that there should be polygamy and daughters should have no right in inheritance. Nehru Ji has to compromise to a huge extent as Rajendra Prasad said that "I will not sign it" and the Hindu Code Bill was not passed at a single time but was passed in three different legislations. So the type of committee which was made for Hindu Code Bill should be made if they want to

bring Uniform Civil Code with the experts in that committee.

Goa follows the Portuguese Civil Code, 1867 and it was amended in 2012 and 2016 and it has 2538 Articles in it. But the question is that whether a progressive, developing, modern and independent need a foreign law to be followed in it and continued there. In December, 1961 Goa became the part of India under Operation Vijay by Indian Armed forces and in 1987 it became a state, so we should have in 1961 only when the laws were reformed in accordance with the Hindu Code Bill we should have extended it to Goa, but we did not extend that modern progressive law instead chose to follow the foreign law and we are following it till date.

The Portuguese Civil Code has some pros and cons and it is also a myth that it is a Uniform Civil Code as according to Article 44 of the constitution “the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India” but the above mentioned code is only followed in Goa and not in whole of India. The framers of the constitution did not use the word “make” in Article 44 but used the word “endeavour” which means to talk about it or to develop consensus about it.

“It is so sad that in 2019 a judgement was given by Justice Deepak Gupta and Justice Aniruddha Bose in Jose Paulo Coutinho case where Justice Deepak Gupta has preferred the applicability of Goa’s Civil Code over Indian Succession Act, 1925 in respect of properties situate outside Goa of a resident of Goa and Justice Deepak Gupta referred to Goa’s Civil Code as “shining example of Uniform Civil Code” where as in Travancore and Kochi Mary Roy (1986) and C J Simon (2012) the general law of the land was applied that is the Indian Succession Act, 1925.”<sup>2</sup>

The 2019 case which is mentioned above its judgement is in contradiction to the Travancore and Kochi Mary Roy case of 1986 and C J Simon case of 2012. Previous Chief Justice S.A. Bobde also said that “Goa’s Civil Code is the shining example of uniform civil code”, but Goa’s Portuguese Civil Code is not a uniform nor a just code. It has many provisions against women and many provisions which give different directions to Catholic Christians and different to others, many directions are given differently to Hindus than others.

## **II. MARRIAGE AND PROPERTY**

Before the marriage there will be a prior contract concerning husband and wife about their properties that, the properties of husband and wife before marriage and properties during marriage, so if divorce takes place or in case any of the party dies then it will be divided equally

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<sup>2</sup> “Explained: Why Goa’s Civil Code is not as uniform as it is made out to be” *The Indian Express*, April 20, 2021.

that is on 50-50 basis. The management of the property is with the Husband and not the Wife so it is not equality and there are some conditions regarding the properties that are:

1. There will be no communion of properties,
2. Property prior to the marriage will be separate from the property after the marriage,
3. Whatever is given in the form of dowry from the wife's side will be given to the husband and the wife has to restore it during the divorce,
4. Communion of assets that is when assets of both the parties will be combined then the husband will not be able to sell his assets without the consent of the wife and the partition will take place during divorce or death of any of the party.

In this system also the management is with the Husband only not with the wife.

There is not only one type of marriage but are of many types. Broadly the contract prior to marriage is a contract by which the marriage is governed is the provision of Islamic Law that is Nikhanama and in that Nikhanama any type of condition can be written in it as in a case Ameen Shenani intervene that this is my Nikhanama and has better rights available in it. Therefore there should be an in depth study of the matter and from that it will be found that there are many problematic things in this code.

The points that can be made in the contract of marriage according to Goa's Portuguese Civil code are:

1. The assets before marriage and assets after marriage will be separated.
2. Both properties will be differentiated and there will be no communion but it is a rare possibility.
3. Wife which is entitled to share in father's property will be given to husband during the time of the marriage and when the husband dies or in case of divorce it will be given back to the wife's family.

But there is a need to understand that what happens in reality is different from what is documented.

The question can be should marriage be a contract or not? So the answer to that can be subjective as it will differ from person to person but if we look upon it an study it then it should be learned from Goa in its Civil Code that marriage is not a sacrament instead it is a perpetual contract similar to that in Islam as it is a "sacred contract" in Islam, it is purely not a "civil contract" as marriage is religion also and a contract too, as it is said by the Prophet "Marriage is half of the religion". So will Hindus today will be able to accept that marriage should become a contract and not a sacrament? It is a question that need to be answered.

The Goa's Portuguese Civil Code talks about the civil marriage that is there should be registration of the marriage and this feature of the code can be praised but at the very same time the code has two different types of situations:

1. Firstly, when you go for the registration then 15 days notice will be given and then you will have to do the signature, and secondly, then after 15 days, a second signature have to be done by the parties then only you will be considered married under the code.
2. But for Catholic Christians the event of second signature will be conducted in a church and on the basis of church's register they will be given the certificate of marriage.

That means the provision for Catholic Christians is different from that of others so it cannot be a Uniform Civil Code. There are so many women in Goa who did not signed the second signature so in reality that is legally they are not married but they think they are married because these women do not know about the provision regarding the second signature and that the marriage is completed only after the second signature.

Just like that in case when the parties want to annul the marriage then also the church has given the right but the marriage of the others will be annulled by the court only. The church in annulling the marriage plays the part only in case of the Catholic Christians and the High Court mechanically does whatever the church decides that is they rely on the decision of the church instead of raising the issue of Bias.

So there is no uniformity in the Goa's Portuguese Civil Code regarding Marriage Registration and in Marriage Termination. It is the myth spread by the media and some learned people that this code is Uniform.

Special Marriage Act also made a provision that if two people from different religion wants to get married then prior to the marriage they have to give a notice. In Allahabad High Court there was a issue regarding Love Jihad so the Allahabad High Court said that there is no need to give any such notice until the would be spouse want to do so themselves.

The Grounds of Separation is given under Article 1204 of the Goa's Portuguese Civil Code in that when the husband wants to leave his wife then only he have to prove adultery and that is enough, but if the wife wants to leave the husband then she has to prove adultery is with the public scandal or he has abandoned the wife or he has kept a mistress in the conjugal domicile. So the process is easier to the husband as compared to the wife. Before 1955 Hindus also has no limitation in polygamy and in Islam the limitation was put in the 6<sup>th</sup> and 7<sup>th</sup> century only of the 4 wives and approval of it was also an exception that when you are able to do justice then only do a more than one marriage but it is also said that how much you try you will not be able

to justice, so in Islam polygamy is accepted but till 1955 Hindus has right to have unlimited number of wives. Then the law came Hindu Marriage Act in which bigamy was an offence but still the Hindus of Goa has right to limited polygamy and the very conditions of it is against the spirit of the Constitution of India:

1. If the wife is 25 years of age and she did not had a child by then that is she did not conceived by then the husband has a right to marry again with the consent of the wife and this right is not given to Muslim or Christian but only Hindu.
2. If wife is 30 years of age or less and there was no pregnancy in the past 10 years and she did not had a son then also the husband has the right to marry again with the consent of the wife

“In Article 1104 of the code is regarding the reservation of maintenance in that the wife is not entitled to the deprive the husband, by way of ante-nuptial contract from administering the asset of the couple, but she may reserve for herself the right to receive part of the income of her assets for pocket expenses and dispose it freely, provided should not exceed one-third of the said net-asset.”<sup>3</sup>

In case of Will according to the Goa's Portuguese Civil Code there cannot be a will of more than the fifty percent of the total asset and in Hindu Succession Act there is no such restriction for Will. In Hindu Succession Act son and daughter have equal rights regarding he property ad this law is from past 70 years but if we look into that Hindu women are owner of how much of land & property and Hindu men are owner of how much property and many research have been done regarding this and it is found that Hindu women are the owner in a minor fraction, if they are owner then also they do not have the control over the property nor the papers of the property. In Goa's Portuguese Civil Code the limitation on the will is similar to that of Islamic law, as in Muslim Personal Law the Will cannot be of more than one-third of the property and the purpose of it is that two-third of the property should be given to heirs and older people of the family. In Hindu Succession Act most of the parents give their property to the sons as there is no such restriction regarding the will and generally the daughters has been told that whatever you got in the dowry is enough for you. The provision for the will is given in Article 1174 of the Goa's Portuguese Civil Code.

In Article 1969 the order of succession id given and the Section 52 of Goa Succession Special Notary's and Inventory Proceeding Act of 2016 same thing is written in that too that is what will be the order of succession and that is:

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<sup>3</sup> The Portuguese Civil Code, 1867

Firstly, to the descendants that is son, grandson, et cetera,

Secondly, to the ascendants that is father, grandfather, et cetera,

Thirdly, to the brothers and sisters and their descendants,

Fourthly, to the surviving spouse that is the wife so the position of the wife in this is fourth, hence the right of the wife is after the above mentioned three categories so it can be said that there is no equality among husband and wife according to the code. The principle which is followed here is that the nearer will exclude the remoter which is similar to the Islamic law.

### **III. CONCLUSION**

Goa's Civil Code which is based on the Code Napoleon which is call the Napoleonic Code is based on the French Law as from France the civil code disseminated to other countries such as Spain, Belgium, Holland and Italy which took it as the basis of national codifications, the Portuguese Civil Code of 1867 was also influenced by it and it was a progressive code in that time when it was made but today it does not comply with the needs of the modern and developing society as this code is not even uniform and is not completely gender just.

On the 1<sup>st</sup> of July 2020, the total of 150 years has passed since the Portuguese Civil Code of 1867 became applicable in Goa. During that period, Goa Family and Succession Law have undergone some changes and is now dispersed through different legal texts, but these changes raised a number of issues not only in the respect of determination of the rules but more in relation to the ideal of Uniform Civil Code which was enriched by the framers of constitution under Article 44.

The people of Goa has also a right that modern progressive laws should be applied to them and not an outdated law so the laws which should be applied to them can be Hindu Succession Act of 1956 and Hindu Marriage Act of 1955.

Law is not different from religion to religion, broadly it can be but the basic difference in law is in accordance to the region that is where the person is residing for example some of the laws which are only applied in Kashmir and not in other part of India and there are some laws which are only applied in the Punjab and nowhere else.

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