



A LOOK INTO THE SUCCESSION RIGHTS OF GOAN

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Abstract

In India, family laws are founded on the religious diaspora's particular rules, which make up Indian culture. Private law-making and adjudication has been recognised as a significant part of India's 'rule of law' since colonial times. As a result, family law has changed dramatically as the country and culture have progressed. The customs and tradition form law when dealing with matrimonial dispute. In this paper, the basic essence and the need for Uniform Civil Code with special emphasis on succession and inheritance rights to Goans. This paper begins with the introduction of UCC in Goa and why the need for Uniform Civil Code across the nation. It further discusses the succession rights and order of succession in great length. Furthermore, the paper also analyses the recent landmark case which extended the Portuguese Civil Code, 1867 to Goans and their property outside the territory of Goa.

Keywords: Portuguese Civil Code, Goans, Uniform Civil Code, succession rights.

INTRODUCTION

One of the crucial subject of conflict in a marriage is the matrimonial property. The term 'matrimonial property' refers to any such property that is owned either by one or both the parties to the institution of marriage. The institution of marriage should reasonable an 'equal economic co-ownership' with equal rights¹.

The concept of a Uniform Civil Court has been enshrined in our Constitution under Article 44² that provides for one single law to govern in matrimonial matters such as marriage, divorce, succession, custody etc. instead of multiple personal laws. The objective of the article as under the Directive Principle of State Policy is to eliminate any discrimination as against the vulnerable sect and to synchronize with diverse religious groups across. Dr. B.R Ambedkar while addressing the Constituent Assembly with regards to uniform civil code said,

"I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law

¹ A CONTEMPORARY STUDY ON THE UNIFORM CIVIL CODE International Journal of Pure and Applied Mathematics Volume 120 No. 5 2018, 4683-4694 ISSN: 1314-3395. Available on: <http://www.acadpubl.eu/hub/>.

² Art. 44 of Constitution of India, 1950. State shall endeavour to provide for its citizens a Uniform Civil Code (UCC) throughout the territory of India.



shall be excluded from the jurisdiction of the State³.”

Furthermore, he contended that uniform civil code is prudent however, at present it should be voluntary, thereby, Art. 35 of the draft Constitution was incorporated as Directive Principles of the State Policy as Art 44 of the Indian Constitution, 1950. It is therefore, to be applicable when the country perceives that there is social acceptance for such a code to prevail across different religious communities.

Goa is a unique state in India, having implemented the Uniform Civil Code notwithstanding any religion, caste or gender. Goa which became a part of the Indian Union by the virtue of the Goa Daman and Diu Administration Act, 1961 wherein the Indian Parliament had implemented the Portuguese Civil Code, 1867 in Goa. The concept of marriage across all religious communities in Goa are contracts between the parties to the marriage irrespective of their differences in religion or caste. There lies a practice of common family law that deals with matters such as marriage, divorce, inheritance, succession etc. The marriage ought to be registered before civil registrar office.

Despite of the independence that Goa received from being a Portugal colony, the civil code is still applicable. The Goa Family Law is majorly formulated from the Portuguese Civil Code (Código Civil Português) of 1867 along with relevant procedure from the Civil Procedure Code of 1939. It is worth noting that, a goan even

beyond the extent of the territories of his state will be governed under the civil code of Goa.

“Goa is a shining example of an Indian State which has a uniform civil code applicable to all, regardless of religion except while protecting certain limited rights.”⁴

When Goa became a part of the Indian territory, most provisions of the Portuguese Code, 1867 was repealed. In early 1970s, goans lobbied for not repealing certain provisions of the Code arguing that the essence of a ‘common family law’ in Goa with respect to matters of marital disputes, adoption, inheritance, custody- forms the cultural uniqueness of the goan communities. It was also proposed that the uniform civil code in Goa were one of its kind and superior as it eliminates any form of gender, religion or caste discrepancies.

Research Methodology

The researcher has followed secondary data collection. This is a doctrinal study. The researcher has also utilized commentaries, books, treatises, articles, notes, comments and other writings to incorporate the various views of the multitude of jurists, with the intention of presenting a holistic view.

Research Question

The research questions are as follows:

1. What are the succession rights and the hierarchy followed according to the Goa Civil Code?

³Volume 7 of the Constituent Assembly Debate (7.65.178). Available at: https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-02

⁴ Jose Paulo Coutinho v. Maria Luiza Valentina Pereira 2019 SCC Online SC 1190.



2. What are the distinct features of the UCC in Goa as opposed to the Personal Laws governing India?

Objectives

The research objectives are as follows:

1. To understand the practical implementation of uniform civil code in Goa

Review of Literature

(Manooja, 2000): The Supreme Court reiterated the attention to implement Uniform Civil Code across all the diverse religion in the country⁵. The Supreme Court has constantly suggested the parliament to implement a uniform code for all matrimonial disputes as its imperative duty under article 44 of Directive Principle of State Policy enshrined in Part IV of the Constitution. As far as the history of uniform civil code goes, the same was prima facie first practiced under the dispensation and jurisdiction of Warren Hastings Judicial (Administrative) Plan of 1772. The policy provided for 'uniform courts of law on civil side in the mofussil⁶ area of Bengal, Bihar and Orissa' for the resident of the particular presidency without any discrimination based on religious faith between Hindus and the Mohammedans. In relation to which legislation will be applicable the personal laws of each religious community were to be enforced respectively. Whereas Muslim criminal law as amended time to time was followed for penalising accused based on

offence of criminal nature applicable to all irrespective of their religious belief and faith. After the establishment of the Apex Court in 1774 as three different legal system came to play- the Hindu law, the Muslim law and the English Law. The Supreme Court in 1781 correlated civil disputes and the Hindu law across all religious communities⁷.

(Parashar, 1992): The kindred between the religious belief and the legislation acts has a barrier towards reformation of personal laws as on codified law. Due to this discrepancies the women are often denied equal rights in matrimonial properties. To conclude, the author adds that the no alternative other than a uniform civil code can bridge the gaps of matrimonial inequality. The author also contends that the concept of personal law was created by the British to maintain their colonial power and the same has since the Independence have been followed.

(Almeida, 2015) In this article the author examine the failure to account for intersectionality with respect to Goa. Further analysing the era of Portuguese colonialism and their law reforms and its existence in today's world. Breaking down the idea of "Indian" identity stressing the failure to account for gender, caste, and class, as well as the unique difficulties of a group that is both isolated from and consumed by Indian identity Considering the failings of even institutional procedures like the Indian Law Commission to consider Goa's demands, as well as the absence of incentive for politicians to do so on their own.

Succession Laws in Goa

⁵ Sarla Mudgai, *President Kalyani v. Union of India*, (1995) 3 SCC 635 : AIR 1995 SC 1531.

⁶ Mofussil area was the area adjoining the Presidency town.

⁷M.P. Jain, *Indian Legal History*, also reiterated in Sarla Mudgai, *President Kalyani v. Union of India*, (1995) 3 SCC 635 : AIR 1995 SC 1539.



Customs and traditions which coincides with the law of nature transit into the law of the land. Customs plays a crucial role while deciding the route for matrimonial disputes. With such a diverse religious sects across the country, Goa protrudes as the only state in India to have a uniform civil code governing matrimonial disputes. Whether Hindu, Muslim, Parsi or Christian all fall under the purview of an unvarying code in the state of Goa. The Portuguese Civil Code, 1867 by the Parliament was extended to the State of Goa by the virtue of the Goa Daman and Diu administration act 1962 when the same was incorporated with the Indian territory.

Perhaps the code specifically provides that such act is applicable to all goans, it is vital to understand the definition of a goan- ***A person is said to be a goan if***⁸:

- i. *He was born in the State of Goa prior to the liberation i.e. before 19th December, 1961. Subsequently, descendants of such people are also goan*
- ii. *A child born in the State of Goa to non-goan parents is termed to be a goan provided he consented to be governed by the laws of Goa*
- iii. *A child born to goan parents outside the territory of Goa provided he consented to be governed by the laws of Goa*
- iv. *A child born in Goa of unknown origin he is deemed to be a goan*

⁸ M.S.Usgaocar, 'Family Laws of Goa, Daman and Diu', Volume I.

⁹ Senior Advocate M.S.Usgaocar, 'Family Laws of Goa, Daman and Diu', Volume I, pg:1.

Article 1056 of Family Laws of Goa, Daman and Diu states⁹:

“Concept of marriage as a civil contract and its purpose –

Marriage is a perpetual contract made between two persons of different sex with the purpose of legitimately constituting a family.”

Article 1057¹⁰ –

“Secular nature of marriage –

Marriage shall be solemnised before the official of Civil Registration Services under the conditions and in the manner established in Civil Law.”

The concept of marriage does not discriminate on the basis of religion. The same is seen as a civil contract between the parties to the marriage. Subsequently, the succession laws governing the state of Goa perhaps is drafted with the same underlying principle.

Section 54 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016¹¹ states-

“Succession per capita.— The relatives who are in the same degree shall inherit per capita or in equal proportion subject to the provisions of section 63”

The act unlike other religious personal laws does not discriminate between sons and daughters with respect to inheritance of

¹⁰ The Portuguese Civil Code, 1867.

¹¹ Section 54 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016.



property. According to Sec 219¹² of the code, by the virtue of marriage 50% of the property is inherited by the spouse. The parties of the marriage have 50% of the shares each. The estate or property of a goan is categorised as disposable and non-disposable property¹³.

Wherein the non-disposable portion is reserved in the interest of their children. Section 17¹⁴ of the act prohibits any transfer of the property without the consultation and deliberation all the legal heir that the particular property belongs to. This ensure legal enforceability and protection for community property shared by multiple legal heir. Consequently, the avoid any dispute in long-run the code also provides for a provision that lays down the procedure wherefore, parties to the property i.e the co-heir can file for a partition – separate share allocation to each legal representative¹⁵. According to Section 84¹⁶ of the code, neither parents nor grandparents can sell their estate to any of their linear descendant without the prior permission of the other children or legal heir.

Goa's non-discriminatory marriage, divorce, child protection, and succession laws extend to persons of all castes, nationalities, and genders. The rest of India, on the other hand,

is governed by the Common Law system, which has faults when it comes to the rights of women and children.

Births and deaths must be registered in accordance with Goan civil laws. The heirs of a deceased parent must be their children. Unless there are exceptional circumstances, male or female heirs cannot be disinherited. If the parents die intestate (without a will), all obligatory heirs are entitled to an equal part of the deceased's estate.

The Sequence of Succession in the State of Goa

When a person dies anywhere in India except for in the state of Goa the property of the deceased is governed by their respective religious personal laws and customs. Perhaps for a goan as defined previously is governed by the laws of Goa as a uniform civil code.

Under the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016 if a person die with a will the person who's name is mentioned as a receiver of such property can be entitled provided that the bequest or the probate of the will is ultra vires of the non-disposable share of the estate which is a legitimate portion of the property set aside for the children¹⁷.

¹² Restrictions on disposition of community assets A disposition of specific and determined properties by a person who is married under the regime of general community of assets is null and void,

¹³ Section 83 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016.

¹⁴ Section 17 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016. Consequences of transfer of specific asset of inheritance.— (1) A co-heir is not entitled to dispose of any specific asset of the inheritance or part of such an asset to a stranger until and unless the said asset or part thereof is allotted to him in the partition. Any such transfer, if made, shall be inoperative and void.

¹⁵ Section 14 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016. Partition by inventory.— An inheritance may be partitioned by a mandatory inventory or optional inventory as provided in sections 366 and 367 respectively.

¹⁶ Section 84 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016. *Restrictions on transfer by parents, or grandparents.*— Parents or grandparents shall have no right to sell or mortgage their assets to their children or grandchildren unless the remaining children or grandchildren and their spouses give their consent thereto in writing.

¹⁷ Section 4(2) of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016 - Testamentary



Whereas a person has died without leaving behind a will the laws of succession will govern. The interstate property will be succeeded by the heir. 'Heir' as defined by the *Black's Law Dictionary*¹⁸ is 'a person who, under the laws of intestacy, is entitled to receive an intestate descendant's property.' According to *Oxford English Dictionary*,¹⁹ heir translates to 'a person legally entitled to the property or rank of another on that person's death.' The sequences for such heirs is prescribed under Section 52 of the Act. **The order is as follows:**

"Order of legal succession"²⁰.— (1) The legal succession shall devolve in the following order:—

- (i) on the descendants;
- (ii) on the ascendants, subject to the provisions of sub-section (2) of section 72;
- (iii) on the brothers and their descendants;
- (iv) on the surviving spouse;
- (v) on the collaterals not comprised in clause (iii) upto the 6th degree;
- (vi) on the State, provided that, in the absence of testamentary or intestate heir of a beneficial owner or of an emphyteusis, the property shall revert to the direct owner."

succession is the succession which results from a will left by the estate leaver and a testamentary heir is a heir instituted by a will. Contractual succession is illegal, except when expressly authorised by law.

¹⁸ The Black's Law Dictionary (9th Edn.)

¹⁹ The Oxford English Dictionary (Indian Edn.)

²⁰ Section 52 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016- Order of legal succession.

²¹ Section 68 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016. Succession of children and their descendants.— Children and their descendants succeed to their respective parents and other ascendants, without distinction of sex or age.

²² Section 72 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016. Succession of

The order of succession predominantly depends on the survivors left behind by the deceased. By the virtue of marriage the spouse is entitled to half the share of the estate of the other spouse. The share of succession wherefore, would be that of the share left by the deceased after his marriage.

The half of the estate whom the deceased prior to his death was the owner shall now be succeeded by the legal heir of the deceased. Section 68 of the Act²¹, provides for the succession of property of an interstate by the deceased's children and their descendants. For illustration, if the deceased has three children and of them will be entitled to equal shares of the estate left by the deceased irrespective of their gender whether sons or daughters. Thus, in the instant case, each of the children would be legally entitled to 1/3rd of the total property. Furthermore, if the children have predeceased the particular person the share thereby of the property would be legally transferred to the children's descendant.

Perhaps in the event there are no children of the deceased then, the ascendants are legally entitled to such shares. As per Section 72²²,

parents.— (1) Where a person dies without descendants, his father and mother shall succeed to him in equal shares or to the entire inheritance where only one of them is living.

(2) However, if there are full blood brothers or sisters of a predeceased child or descendants of the deceased full blood brothers or sisters of such child, the father or the mother who has married again does not inherit the assets which the predeceased child had inherited from the other progenitor or from his other ascendants but only the usufruct thereof.

(3) Where the parents have acknowledged that they are the parents of a child during the lifetime of the child, and the child dies without issue, the inheritance shall devolve upon his parents or one of them, as the case may be; where, in the circumstances mentioned above,



such property shall be succeeded by such surviving parents. Similarly, if the parents have predeceased such a person who's property is in question and have their parents surviving then, such property shall be succeeded by the grandparents of the deceased. Thus, following the doctrine of ascendance.

The brothers and sisters of the deceased are eligible to acquire such property legally by succession only in the event there are no ascendant or descendant survivor of the deceased. The siblings are considered as 'collateral heirs.'²³ However, there lies one prominent constrain the surviving spouse is legally entitled to have 'usufructuary of the estate' of the deceased spouse provided they were not divorced before the death of the deceased. In other words, the collateral heir shall succeed subject certain rights the spouse. The collateral heir on such succession becomes the owner however, he cannot eject or remove the spouse of the deceased from his/her share of the property to use until his/her lifetime. This mere rights is called the 'usufructuary right of the estate' given to the spouse of the deceased.

Section 77 of the Act states²⁴, "*In default of descendants, ascendants, brothers, sisters and their descendants, the surviving spouse shall succeed, provided that at the time of the death of the other spouse, they were not*

such child dies without issue but leaving a surviving spouse, the surviving spouse shall have the right to usufruct of half of the inheritance.

²³ Section 76 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016. Succession of brothers, sisters and their descendants.— In default of descendants and ascendants and where the estate leaver has not disposed off his assets, his brothers, sisters and, in a representative capacity, their descendants, shall inherit the assets. However, the

divorced or there had been no judicial separation of spouses and assets by a decision which had become final."

In circumstances, where there is no descendants, ascendants or collateral heir surviving or present the spouse shall be the sole owner of the estate by acquiring the other half-of-the share from his/her deceased spouse.

Case Analysis

*Jose Paulo Coutinho v Maria Luiza Valentina Pereira, 2019*²⁵

In a recent landmark judgement the Supreme Court extended the ambit of the Portuguese Code, 1867. Whilst dealing with the question of "*Whether succession to the property of a Goan situate outside Goa in India will be governed by the Portuguese Civil Code, 1867 as applicable in the State of Goa or the Indian succession Act, 1925*" in a civil appeal wherein Joaquim Mariano Pereira (JMP) deceased had three daughters. JMP was situated in Bombay and had purchased property thereof in 1955. Bequeathing his Bombay property to youngest daughter Maria and Rs 3000/- each to the other two daughters. His wife had predeceased him in the year 1960 whereas he passed away in 1967. The Bombay High Court granted the probate of Will dated in the year 1957, at its Goa bench in 1980. Both the other daughters

surviving spouse shall be the usufructuary of the estate of the deceased spouse irrespective of their matrimonial regime, if at the time of the death of the latter they were not divorced or there was no judicial separation by a decision that had become final.

²⁴ Section 77 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2016.

²⁵ Jose Paulo Coutinho v Maria Luiza Valentina Pereira, (2019) 20 SCC 85.



were served notice of the probate proceedings.

The Goa, Daman and Diu Act, 1962 states that all prior laws and legislation applicable in Goa until 1961 will prevail until amended by the competent authority²⁶. In the instant case, the parties to the case are of the belief that the succession and inheritance of properties in Goa governed by the Portuguese Code, however, the issue in hand is whether the property of such Goans governed by the Portuguese Code would also encompass the property owned outside Goa.

The Supreme Court in the present case, observed that the Portuguese Civil Code is indeed a special law and thereby would prevail over any local law. Referring to cases *R.S. Raghunath vs State Of Karnataka And Anr*²⁷, *Atma Ram Properties Pvt. Ltd. vs The Oriental Insurance Co. Ltd.*²⁸ Perhaps overruling the classification of Portuguese Code being a local law²⁹.

While interpreting Article 24 of the Portuguese Civil Code, 1867 it is evident that the Civil Code is applicable to properties within and outside the territory of Goa. The Supreme Court said,

“If we were to hold otherwise, the consequences could be disastrous, to say the least. There would be no certainty of succession. It would be virtually impossible to determine the legitime which is an inherent part of the law of succession. The rights of the

spouses to have 50% of the property could easily be defeated by buying properties outside the State of Goa. In the case of a Hindu Goan domicile it would lead to further complications because if we were to accept the judgment of the learned Single Judge and the arguments of the respondents, for the properties in Goa, the Civil Code’ would apply but for the properties outside the territory of Goa, the Hindu Succession Act will apply. Similarly, for Muslims within the State of Goa, Civil Code would apply and outside Goa, the Muslim Personal Law (Shariat) Application Act, 1937 would apply. This would lead to many uncalled for disputes and total uncertainty with regard to succession.”

Furthermore, the Supreme Court observed that despite being incorporated in the Indian Constitution, the Centre is breaching key directive principle of state policy principles by neglecting to draught a Uniform Civil Code (UCC). Article 44 of the Constitution, which describes the framers' goal, *“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”*

CONCLUSION

The Supreme Court has used no equivocation in conveying its message loud and clear, as is evident from the preceding judgement in this historic case, that notwithstanding judicial urging, no attempt has been taken to draught a standard civil code. The Supreme Court has

²⁶Section 5 of Goa, Daman and Diu (Administration) Act, 1962. Continuance of existing laws and their adaptation.—(1) All laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority.

²⁷ R.S. Raghunath vs State Of Karnataka And Anr 1992 AIR 81, 1991 SCR Supl. (1) 387

²⁸ Atma Ram Properties Pvt. Ltd. vs The Oriental Insurance Co. Ltd Civil Appeal NO.20913 OF 2017 (Arising out of S.L.P. (Civil) No.17117 of 2016)

²⁹ Pema Chibar Alias Preamabhai v Union Of India And Others 1966 AIR 442, 1966 SCR (1) 357.



written reams and reams about the desperate need for a common civil code in our country, but the Centre has consistently ignored it.

Marriage, divorce, child protection, and succession laws in Goa are non-discriminatory and apply to people of all castes, ethnicities, and genders. The remainder of India, on the other hand, is regulated by the Common Law system, which has flaws when it comes to women's and children's rights. According to Goan civil law, all births and deaths must be recorded. Children must be the heirs of a deceased parent. Male or female heirs cannot be disinherited unless there are extraordinary conditions. All mandatory heirs are entitled to an equal share of the deceased's inheritance if the parents die intestate (without a will). In the event, if there is no will, the parents can only use their discretion to dispose of 50% of the inheritance, which is known as "quota disponivel." The remaining 50% must be equally allocated among all of the required heirs. This clause ensures an equitable transfer of assets among all mandatory heirs, whether male or female. The only way a woman can lose her inheritance is if she expressly renounces it, and this renunciation can only be made after her parents have died.

The Supreme Court has often argued in favour of a common civil code in a series of landmark rulings, yet what an irresistible irony that, even after more than 72 years of independence, the idea of a common civil code remains a pipedream. The Centre must move now by acting courageously on what the Supreme Court has directed so impressively in this landmark case, just as it has done previously.

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