

ANALYSIS LAW

CJI Bobde Needs to Know That Goa Family Laws Are Not All Uniform or Equal

Recently, CJI S.A. Bobde hailed the uniform civil code of Goa, pointing out that it is what constitutional makers had indeed envisaged, touching upon the contentious issue.





Albertina Almeida



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Goa's Uniform Civil Code (UCC) is neither uniform nor exactly a shining example of a progressive law, given the fact that it discriminates on the basis of gender, even in allowing polygamy for Hindus, amongst other things. Thus, it was surprising to see the claim of uniformity in the spotlight again, after Chief Justice of India (CJI) S. A. Bobde **alluded** to it when inaugurating the new building of the high court of Bombay at Goa on March 27.

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Bobde **claimed** that Goa's UCC is the uniform civil code that India's constitution framers had envisaged more than half a century ago. Given the fact that some of the provisions of the UCC are not uniform and make allowance for the practices of different communities, the dearth of academic rigour in judges, in characterising Goa's family laws as a 'uniform code', is lamentable. At best, it can be called a quasi-uniform code as Dr. Dario Moura Vicente, professor of law, the University of Lisbon **suggests**.

Moreover, the CJI's derision of 'academic talk' and his call to intellectuals "to come to Goa and watch the administration" of the UCC is in bad taste. It appears that the CJI was reacting to a critique by several intellectuals, including activists, who questioned his wisdom of **asking a rapist whether he would marry the victim**.

Also read: 'Goa Has What Constitution Makers Envisaged': CJI Hails Uniform Civil Code of State

Considering that only a few cases relating to family laws of Goa, and particularly marriage laws, reach the high court in Goa, the administration of the code may be not exactly visible to someone from outside like Bobde, who merely sat on the bench of the Bombay high court, but never practiced here. It is

also not understood why the CJI made an isolated reference to the Hindu texts of the *shrutis* being followed during Kadamba dynasty rule in the same speech.

One can neither conclude that uniformity benefits the subordinated stakeholders in the family law, such as women and children, nor can one conclude that the lack of uniformity does so. As a matter of fact, the dichotomy of uniformity and lack of uniformity is a false one. It is not understood why people aspire for uniformity as a value in law.

To illustrate, there is a provision in Goa's family laws for two types of marriages, that is canonical marriages for Roman Catholics, and civil marriages for non-Roman Catholics and those who opt out of canonical marriages.

Marriages

A canonical marriage, that is a marriage in the church, cannot be solemnised without the declaration of intent before the civil registrar of marriages, and the priest solemnising the marriage can be held accountable. This, therefore, ensures that there is a complete record created of the marriage, even if the parties have no basic legal education about the registration procedure.



Representative image. Photo: kgorz/Pixabay/Free use

The provision for Roman Catholics cannot be replicated for Hindus because of different ritual practices in Hindu marriages, wherein in some cases no priest may be involved. But the provision at least works to the aid of Roman Catholics, who, like people from other communities, would have ended up being deceived by a scheming marital family except for the checks and balances introduced in the law. Therefore, though there is categorisation of marriage based on religion, and the law is, therefore, not uniform, but it proves to be beneficial for at least a certain section of society.

Code of Gentile Hindu Usages and Customs of Goa

At another level, part of the package of family laws of Goa is a Code of Gentile Hindu Usages and Customs of Goa. Dr. Dario enlists a Decree of 1869 that formally enshrined the principle of the plurality of personal statutes of Private Law applicable in Portuguese Overseas territories. On the basis of this decree, the Gentile Hindu Usages and Customs were codified and retained, and now continue to be applicable, so long as it is **not contrary to moral or public policy**, which is different from being not contrary to constitutionality. Certainty is the hallmark of a law. Here, what constitutes moral or public policy lies in the realm of the uncertain.

The Code of Gentile Hindu Customs and Usages has atrociously discriminatory provisions that distinguish how a person should differently take oath in court based on caste, when marriage by simultaneous polygamy can be permitted for a Hindu, under certain circumstances (such as in the absence of male issues until the age of 30 years), when adoption is permitted *uniformly* for a ‘Hindu of any caste’ (such as when there is no male progeny), provisions relating to joint families (where the manager has to be the senior most male). But the government has shown no inclination so far to

expressly repeal these atrocious provisions to leave no room for uncertainty.

Also read: [Yet Another Petition for the Uniform Civil Code in a Vacuum](#)

In fact, a petition challenging one such unjust provision in the Gentile Hindu Usages and Customs which permits only males to be adopted by Gentile Hindus in the absence of legitimate male issues is now pending before the high court of Bombay at Goa. The petitioner, a law student Shukr Sudin Sinai Usgaonkar, has issued **public notices** through newspapers, following a direction to that effect by the high court to inform the affected parties if any about the issues in the petition, so that they may be at liberty to intervene in the petition.

There are also discriminatory provisions among the provisions that are uniformly applicable. A salient example is the stipulation in the law that the management and administration of the properties of the couple, and even the exclusive properties of the wife, belongs to the husband. No doubt there is a noteworthy concept of marital property rights, but lack of access for women to details about the properties, so as to lay a claim, often renders the matrimonial property rights concept nugatory, even to those women who know about the existence of the concept in Goa.

It cannot be forgotten that the family laws of Goa are a Portuguese legacy, last amended up to the time when Goa was integrated into India in 1961. The law has since undergone substantial change in Portugal. In Goa, the government, recognising that the law needs an update and revision, constituted a committee in 2002, to draft a bill on the “Goa Family Code”.

The portion of the law on succession and related matters was updated and revised on the basis of a draft of the chapter submitted by the committee and enacted by the Goa Legislative Assembly. The law called the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012, was enacted in 2016, but the series of chapters that had been deliberated on or were remaining to be discussed by the Committee was abandoned.

In a democratic country, people, including academics or intellectuals, deserve, as a right, responsible comments from someone who is at the helm of the Supreme Court of India, rather than derision directed at academics and intellectuals. At the very least, the learned judge should have properly appraised himself of the family laws of Goa before praising them and terming them uniform.

Albertina Almeida is a Goa-based lawyer and human rights activist.

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