

What the now pitched Uniform Civil Code portends for Goa



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Uniform Civil Code is coming in the face of terrible scenarios, where the entire rhetoric for Uniform Civil Code is accusatory of Muslims. Scenarios where Manipur is burning and has been polarized on communal grounds, with Christian structures being raised to the ground

The current national debate on a Uniform Civil Code has not drawn the attention it should have in Goa, perhaps because it is presumed that this only pertains to the rest of the country, since we already have a near-uniform civil code, or near-uniform family laws, to be more precise. However, we need to remember that the pitch for a Uniform Civil Code by the ruling dispensation is upped by the 'One Law One Nation' symbol, which means that whatever it is that is coming, will be imposed on Goa as well.

Therefore, it is necessary to figure out where and how we have to respond. The 22nd Law Commission has, through public notice on 14th June, 2023, solicited views and ideas of the public at large and recognized religious organizations about the Uniform Civil Code, and responses have to be given within 30 days. If that is so, and considering that even the committee constituted by the Uttarakhnad Government to draft an Uniform Civil Code in Uttarakhnad has said that they were going to be working on the lines of the Goa Laws, it is time to point out the flaws in our laws.

First of all, the family laws have been dismembered from the rest of the Portuguese Civil Code of which they were a part. Indian laws have been extended to Goa, except for the family laws and a few other laws. But although these extended laws should be subordinate to the

is no equality in treating unequals as equals. Therefore, in a society which expects a woman to move to her husband's place upon marriage, equal matrimonial property rights mean that the husband also has rights to his wife's inherited property, generally without even contributing, in cash or kind towards the maintenance of the properties particularly house property. Whereas, the female spouse by virtue of the fact that she is living in the husband's two or three generation family, will invariably end up contributing by her physical work, if not also in cash, to the maintenance of his property. As a matter of fact, when a female spouse institutes a suit for divorce, one finds that this is met with an inventory proceeding initiated by the husband in respect of his wife's parents' properties, if one or both of the parents have died. This in turn sets in motion a reaction from the parental family/siblings of the female spouse, who do not want the man (who they consider an outsider) having stake in the family property. This is, apart from the challenges in securing details of the properties.

But such challenges are not considered at all in the current discourse on the Uniform Civil Code: if the laws have to be amended or drawn from, then the experiences of the law from the standpoint of marginalised stakeholders in the family, such as women, children, disabled persons, in each physical and social location, should be factored in, while reforming the existing family laws. The Goa Government had, some years ago, constituted a committee to translate, review, and update the family laws of Goa, of which this writer was a member. The laws had not been revised since 1936, is the Portuguese law of the time when Portugal itself has changed its laws, significantly in 1966, although there are newer forms of holding property such as time shares, cyber property, bitcoins, and newer emerging forms of family. Today there are live-in relationships, de facto adoptions, surrogate arrangements. Where is one to turn to for either ascertaining or securing the rights of concerned stakeholders, as the case may be, in these contexts? But before all this could be explored, the one chapter of the law that was worked on was taken and enacted, in 2016, and the Committee was quietly disbanded, completely missing the point about a Code of laws.

There is also no clarity as to whether the Hindu Undivided family will continue to exist as it does in Goa, through sexist provisions in the Code of Customs and Usages of Gentile Hindus. Why are there double standards deployed by the ruling party? In Goa, as in India, we have the

same primary ruling dispensation, that is the Bharatiya Janata Party. Why does the Code of Customs and Usages of Gentile Hindus still stand, with its obnoxious sexist provisions, such as permission for 'simultaneous polygamy' if the couple does not have a male child by the time the first wife is 30 years of age, and ten years have elapsed from the last pregnancy? If these provisions will not apply as being contrary to public policy, why not expressly repeal these provisions? This indeed smacks of double standards and gives the impression that the sole objective of the idea of Uniform Civil Code is to target minorities, particularly Muslims, and is not borne out of any concern for Muslim women.

Also, as if it, the laws are not free-willingly accessed in the present circumstances. For instance, one does find a lot of Catholic women reluctant to apply for divorce, even if their marriages are on the rocks, because of religious injunctions. To add to this, all this foregrounding of Uniform Civil Code is coming in the face of terrible scenarios. Scenarios where the entire rhetoric for Uniform Civil Code is accusatory of Muslims. Scenarios where Manipur is burning and has been polarized on communal grounds, with Christian structures being raised to the ground. Scenarios where locally, there is even talk of removing traces of Portuguese rule, which is understood as traces of Catholicism. So any woman challenging the dominant constructions of religious scriptures, or seeking a divorce, ostensibly against Catholic prescriptions, will be forced not to access the law, as it will be seen as an assault on the religion. Post the Gujarat riots of 2002, when Goan Muslim women who never wore the burqa turned to it, and were asked why they said it is because they perceived from happenings in Gujarat that there was no solace from the State which was supposed to protect women and minorities, and that if at all, it as their religious heads that took care of them.

Finally, from our location (in terms of legal history and lived experience of the law), we cannot but urge for due consultative processes, in keeping with the longstanding demand from women's groups in Goa. Goa has already shown the way to some extent in terms of how it could possibly be done, when it set about enacting the Goa Children's Act. There were bottom-up processes, involving stakeholders and concerned citizens. It is not enough for a Law Commission to make a random call and give a limited 30-days feedback time.

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Goan family laws in matters relating to the family this is not the case. So, for instance, the Companies Act does not require the signature of the spouse for transfer of shares as necessary when it comes to transfer of a house or land, in contravention of the matrimonial property law that does not permit alienation of assets without the consent of the other spouse.

Similarly, the principle of substantive equality, that the 21st Law Commission talked about in its Consultation Paper released in August 2018, does not find space in the existing family laws in Goa. To quote the 21st Law Commission, "... equity, and not mere equality, would mean that preferential rights and protections are maintained for vulnerable or historically subordinated sections of the society, for there