

Original Research Article

**TOWARDS ATMANIRBHAR SAMAJ: GOA'S UNIFORM CIVIL CODE,
A MODEL FOR REST OF INDIA**

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Abstract:

Atmanirbhar or self-reliance engulfs multiple facets of human life and activity and does not rest only at the door of economics. Social self-reliance or Samajik Atmanirbharata refers to the ability of a community to function with a level of cohesion, social accountability and mutual dependence - taking decisions, mobilizing resources and building and maximizing inter-personal capacity to address issues and initiatives for mutual benefits. In a country as diverse in nature as ours, attaining social self-reliance by retaining our family values and cultural ethos is paramount towards the creation of a strong and confident India.

The Family Laws of Goa relating to marriage, divorce, adoption and succession are different from the rest of the country. The Civil Code of Goa, derived largely from the Codigo Civil Portugues (Portuguese Civil Code) of 1867, based on Code Napoleon, was made applicable to Goa in 1870, underwent a change in 1880, when it incorporated the special and private usages and customs of the native Hindus, which had been codified and to the extent they were not against morality and public order. In 1910, the Code underwent further changes in keeping with the Portugal's Republican spirit. After Goa's liberation, vide the Goa, Daman and Diu Administration Act of 1962, the Indian Parliament maintained all the family laws in force in Goa before its liberation.

Based on Goan experience of uniform Civil Code, this paper expresses an ideal towards self-reliant and harmonious Indian society and attempts to provide a valuable counterpoint to the modern day emphasis on preserving diversity, at the cost of unity.

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Introduction

One of America's most influential writers and poets of his times-Ralph Waldo Emerson (1803-1882), boldly said in his essay titled '**Self-Reliance**', that society and especially today's politically correct environment has an adverse effect on a person's growth and hence self-sufficiency gives a person, the freedom needed to discover one's true self and attain one's true independence. According to Sunder Sarukkai: "self-reliance is not in the sphere of manufacturing alone. It has to be the articulation of the self of a nation about progress and development, about educational goals for the future citizens of the country, about basic well-being of all the citizens, particularly the dispossessed and the marginalised".

With expanding population and scarcity of resources, the developing society tends to become less cohesive and intolerant due to clash of backgrounds, unfamiliar traits and different customs. In order to achieve a self-sufficient and cohesive social structure, the community well-being has to be promoted by creating a conducive social environment. Thus, *Atmanirbhar* or self-reliance engulfs multiple facets of human life and activity and does not rest

only at the doorsteps of economics. Whereas, *Samajik Atmanirbharata* or social self-reliance refers to the ability of a community to function with a level of cohesion, social accountability and mutual dependence - taking decisions, mobilizing resources and building and maximizing inter-personal capacity to address issues and initiatives for mutual benefits. In a country as diverse in nature as ours, attaining social self-reliance by retaining our family value system and cultural ethos is paramount towards the creation of a strong and confident India. Late Dr. Abdul Kalam, former President of India reasoned that a strong and happy family leads to the birth of a noble nation. As we talk of rising economic prosperity and a strong and confident India, there is a need to think of the core values that make for a truly sustainable society at the heart of which lies the family.

The Portuguese possessions in India, jointly named as the *Estado da Índia Portuguesa* or Portuguese State of India, comprised of the territories of Goa, Daman, Diu; Dadra and Nagar Haveli in the vicinity of Daman, were the enclaves organically dependent upon the erstwhile Bombay Presidency. The Territory of Goa with an area of 3701 km², was the most prized possession of the Portuguese. While they occupied Ilhas or Tiswadi on 25th November 1510, thirty-eight years later they occupied Bardes and Salcete and on annexing Mormugão, they called them together the *Velhas Conquistas* i.e. Old Conquests. They took a very long time to seize the other areas and it was only in the 18th century (between 1763-1788), that they could possess the whole of present day Goa by annexing one by one areas, which they named together, the *Novas Conquistas* or New Conquests.

Portugal was under absolute monarchy before 1822 and it whirled between absolute and constitutional monarchy thereafter and became a decisive constitutional monarchy as a consequence of the Liberal Civil War in 1834. In the year 1910, the country witnessed a political turmoil leading to the establishment of a Republic on 5th October. The unsteady, chaotic rule of the Republic was ended with the advent of the military dictatorship on 28th May 1926. Thereafter, the dictatorial regime came in to existence with Salazar's installation, first as Finance Minister (1928) and later as the Prime Minister (1932), which continued till Goa was liberated by the Indian forces in 1961.

Goa's Uniform Civil Code: Genesis and Journey

In around 1820, Portugal having influenced by the codification system of France and other European countries, took up the process with a built-in provision of its extension to the colonies after due alteration on suitable dates. Thereafter in the 19th and 20th centuries, various Codes were enacted in Portugal and in due course of time made applicable to the colonies with suitable modifications, so as to maintain their harmony with the special administrative Charters and Laws enacted from time to time. This exercise resulted in the compilation of several Codes and thus, in the 19th century Portugal, starting from 1832, there were more than seven administrative Codes, enacted or amended from time to time. These Codes proved to be of immense importance to rationalise and define in fine print, the broad aspect of territorial administration.

The Hindu Family Customary Law was accorded recognition by the Portuguese in the 19th century and a part of it in the 20th century as well. Based on the law of 14 October 1853, the Code of Uses and Customs of the Inhabitants of the New Conquests (excluding the Christian community), containing only those items of the Customary laws approved and recognised by the Portuguese government was enforced from 1st November of that year. As per the provisions contained therein, Polygamy was permitted when an earlier marriage failed to produce a male child. On the occasion of a birth in the family, it was the duty of every citizen to register it within fifteen days after delivery. If the child was illegitimate, the mother had to report personally to register it and the name of the biological father in such cases could not be included unless he was willing to do so. The process of adoption, formed a crucial part of the personal customary law and those Brahmans and Kshatriyas, who had no sons but only daughters were permitted to adopt a male child. Other castes could also adopt the male child according to their own customs and requirements.

The Kalavants or temple dancers and Bhavins were permitted to adopt children of either sex, even if they already had their own children. Widows were also allowed to adopt a male child and the adoptive had the legal right over his adopted mother's property after her death. All adopted children were to be considered heirs along with the children borne after adoption for adopted father's property. There was uniformity in the procedure followed by the government in the registration of births, deaths and adoption amongst the Catholics and the non-Catholics in the Old Conquests as well as in the New Conquests.

The Civil Code, which was self-contained, covering substantive civil laws, was approved in Portugal by a Law of 1st July 1867 and by the enactment dated 18th November 1869, ordered to extend it to the Overseas Colonies with effect from 1st July 1870, safeguarding the usages and customs of Goa, Daman and Diu, which had been codified and to the extent that they were not against morality and public order. The Portuguese Civil Code was based on Code Napoleon and contained about two thousand and five hundred articles, divided over four major sections involving civil capacity, the acquisition of rights, the right to property and the breach of rights and its restitution.

Subsequently, through the Decree of 16th December 1880, the special and private usages and customs of the Hindus was revised and codified to deal with issues like polygamy in a restricted sense, promoting the joint family system, prohibition against succession of illegitimate issues except for certain persons and adoption, which were retained from the earlier Code, without differentiating between the Old and the New Conquests and was made applicable to all the Hindus in the Portuguese State of India for the first time.⁵ Subsequently, the Decree of 9th November 1912, modified and approved the Civil Code of 1911 for the State of India and enforced it from 1st January 1914. Further, the Civil Code was altered again by a Decree of 16th December 1930 and extended to the Overseas Provinces in September 1931. In view of signing a new *concordat* between the Holy See and the Portuguese Republic on 7th May 1940, the Portuguese State promulgated a separate Decree on 22nd January 1946 to deal with the canonical marriages in Goa, Daman and Diu, between natives, non-natives or between a native and a non-native and so on, which was to be in force with effect from 4th September 1946.

The Civil Registration Code or *Código do Registo Civil* dealt with details about a person's identity together with his status in the community as evidenced from his birth, death, marriage and other aspects allied to it, including family formation. On 17th September 1901, a Decree enforced the regulations of civil registration approved for Portugal in 1875 to Overseas Territories to the extent applicable, pending enactment of a new one. Special regulations were also enacted on 12th July 1902, for the Portuguese State of India. Subsequently, the 1902 regulations were found unsatisfactory for non-Catholics and hence the regulations of 1910 adopted the civil registration to certain specific facts, keeping in mind their special circumstances. The Civil Registration Code of 18 February 1911 encompassed various aspects, including placing the civil registration service under the ministry of justice. Thereafter, the 1911 Code was modified to accord respect to the uses and customs of non-Christians and was adopted for Portuguese India by the Decree of 9th November 1912, to be enforced with effect from 1st January 1914 as the Code of Civil Registration for State of India, thereby making the civil registration a compulsory exercise. The 1912 Code was liberal as its authors felt that total banishing of traditions, religious and social practices would create disturbances.

The Law of Dissolution of Marriage also had a provision for divorce including that with mutual consent, provided through an enactment of 3rd November 1910. This was to be embodied as an amendment to the Civil Code and Code of Civil Procedure, which came into force in the Province of Goa with effect from 26th May 1911 and declared that marriage was purely a civil contract and could only be contracted before the Civil Registrar and only such a marriage is valid. The Decree regulated important matters such as voidable marriages and annulment, fate and custody of minor children, conjugal union and duties. The 1910 Decree for the first time, legally sanctioned divorce on various

grounds including adultery committed by husband or wife, conviction for a serious offence, cruelty, abandonment of conjugal domicile for more than three years, absence where nothing is heard about the person for a period of more than four years, incurable lunacy, voluntary separation for ten consecutive years and incurable contagious diseases. As a solace to many a long suffering wives, the Decree (Article 4) also included the chronic vice of gambling as a ground for divorce. The positive aspects of the Decree of 1910 was that it embodied several progressive provisions, like protection of illegitimate children and their mothers, the right of the man to adopt the children of his concubine etc. There was also a provision made to recognise the legitimacy of such adopted children to inherit the property of the father on par with legitimate sons. Additional progressive provisions were introduced by the government in terms of parental control during subsistence and after the dissolution of marriage, maintenance after divorce etc., by issuing a Decree dated 16th December 1930.

Status of Civil Code post Goa's Liberation

After the liberation of Goa on 19 December 1961, the Parliament of India passed the Goa, Daman and Diu Administration Act, 1962 and vide Section 5 (1) of the Act, it proclaimed that all laws in force immediately before the appointed date (20.12.1961) in Goa, Daman and Diu or any part thereof, shall continue to be in force therein until amended or replaced by a competent legislature or other competent authority and the Civil Code of 1867 is an internal law. With the integration into India, several laws such as Contract and the Transfer of Property Acts had been extended to this Territory and as a result, the Chapters of the Civil Code dealing with those subjects had been replaced. However, the Family and Succession Law embodied in the Civil Code and in the 1910 Decrees, which constitutes the personal law of the people of Goa State continues to be in force.

Whereas the Article 44 of Indian Constitution reads: "The State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India", consistently following the resolve solemnly expressed in its Preamble to constitute India into a Sovereign Socialist Democratic Republic. Till now, this salutary, far-reaching and very important directive principle enshrined in the Constitution has not borne any fruits. The Territory of Goa along with Daman and Diu, however unlike the rest of India, has the unique distinction and the privilege of already having a uniform Civil Code for more than a century, equally governing and regulating the juridical relations of its citizens, irrespective of their race, sex, caste or creed. The Goa Civil Code constitutes the basic substantive Civil Law and it regulates, *inter alia*, matters relating to family, contracts, succession and property. The liberal and balanced approach to the subjects regulated has obviously satisfied the highly developed sense of justice of the people of Goa, for right from its coming into force, the code has been adhered to and strictly followed by all the communities, Hindus and Muslims having even, generally and with rare exceptions, chosen to ignore those usages and customs of their communities expressly saved in the Code of Usages and Customs. The Code has thus proved to be a powerful weapon to create and forge a cohesive, well-knitted and harmonious society with its citizens living in peace and harmony, as well as to strengthen that basic unit of the society-the family, by safeguarding the interests of the children and of the widows. To some extent, therefore, the Code has fulfilled in this Territory that resolve so eloquently expressed in the Preamble of our Constitution to constitute India in to a Secular Republic and to secure social and economic justice to all the citizens, equality of status and of opportunity and fraternity assuring the dignity of the individual.

Conclusion

The Family laws of Goa are different from the rest of the country and primarily contained in the Civil Code of 1867, a self-contained Code embodying the substantive law on the civil side and in our country, there is no Civil Code as such but a plethora of Acts dealing with the substantive law. The Indian culture has always been known for unity in diversity. Culture can only flourish if there is not too much unity and at the same time there is not too much disunity

in the political organism. Yet, a common Civil Code, which brings into existence certain uniformity in Family Laws is the aspiration of Article 44 of our Constitution. The Portuguese Civil Code has stood the test of the times and has contributed to forge in this Territory, a cohesive and homogeneous society, free of communal passions to a large extent.

Broadly speaking, the regime of communion of properties governing the marriage in the absence of any agreement to the contrary is totally uncommon in India. Similarly, the compulsion of execution of the marriage before the Civil Registrar is also uncommon in India with the exception of Special Marriage Act, which by itself is not mandatory but only optional in its application. Also in the matter of the Succession, the restriction on the estate-leaver to dispose the full estate, when there are descendants and ascendants, does not find place in the rest of India with the exception of Muslim Law, in which the said principle has limited application. Would it not be more ideal or suited to India, the regime of communion of properties, even though in Portugal since the promulgation of new code in 1966, subsequently amended in 1977, there is change in regard to the regime of properties. Would not such law give better protection to the majority of women towards their empowerment. In the same manner, would not the restriction on total disposition be of help to maintain the link in the family, the smallest unit which forms the nation, so much so, that even in the Hindu community the joint family system is disappearing day by day.

The Family laws of Goa, which are modern and have abled Goans of all religious denominations to function cohesively with accountability and thus maintain communal harmony, even after sixty years of being with rest of India. From the protection of citizen's rights, equality of all with regard to basic social unit-the family, women empowerment to forging unity among all the religious denominations, the uniform Civil Code of Goa brought social self-reliance or *samajik atmanirbharata* in mid nineteenth century, ushering in the age of enlightenment and placed it on the same page as modern European society. Goa has made commendable progress after liberation in terms of socio-cultural and human development indicators, which are to be attributed to its self-reliant social structure. The Civil Code of Goa is in total sync with the aspirations of *Atmanirbhar* India, to be on the path of becoming a modern self-reliant civil society. Based on Goan experience of more than a century, the uniform Civil Code is an ideal towards self-reliant and harmonious Indian society and provide a valuable counterpoint to the modern day emphasis on preserving diversity, at the cost of unity.

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