



The discourse of the ruling dispensation on Uniform Civil Code (UCC) centres around ensuring that Muslims can no longer marry four wives, with the claim being that a nationwide UCC will maintain communal harmony. The idea, presumably, is that one law for all makes all the religious communities get along better with each other. Even as recently as May 2023, Union Minister of State for Social Justice and Empowerment, Ramdas Athawale, said that “the Uniform Civil Code is needed to ensure communal harmony in the country”.

But it is not understood how communal harmony is proposed to be achieved through a uniform civil code. Is it the case of the Government that communal harmony is to be achieved by flattening identities, and not recognizing diverse practices of the different religious communities found among the people in India belong, or the practices of atheists for that matter? If anything, the history of Goa’s ‘Uniform Civil Code’, which means the old family laws still applicable in Goa, is replete with examples of how the flattening of a law, to make it the same for everyone, has met with resistance, either from particular religious communities or institutions.

To illustrate, we can simply look at the provisions relating to marriage and family in the basket of family laws that is termed as Goa’s Uniform Civil Code. The basket of family laws, which covers the law of marriage, includes, the then Portuguese Civil Code and the Usages and Customs of Gentile Hindus in Goa. The Portuguese Civil Code is an example of diversity in unity, and the Usages and Customs of Gentile Hindus in Goa are an example of diversity upheld through a different law. We can then proceed to ask what kind of diversity might be encompassed in these two laws.

As of now, there appear to be three different forms of marriage recognized in the law. In the version of the Portuguese Civil Code in its Chapter on Law of Marriage that still applies to Goa, there is recognition for two different forms of marriage, that is, canonical marriage (where the intent of marriage is signed before the Civil Registrar, and the confirmation of marriage is signed in a Church Register, the extract of which is sent to the Registrar of Marriages), and civil marriage (where both intent and confirmation are signed before the Registrar of Marriages). Then there are the Usages and Customs of Gentile Hindus of Goa, which provides for the civil recognition of marriages solemnized by the Hindus as per their religious rites. The Law on Usages and Customs also provides for civil recognition to a marriage contracted by a male Hindu by simultaneous polygamy, if, among other things, there is no issue (meaning child) by the wife of the previous marriage, before the wife has completed 25 years of age, or there is no male issue before the wife has completed 30 years of age and ten years have elapsed from the last pregnancy, and this marriage is contracted

with the consent of the previous wife.



Of Marriage, Bigamy, Family and UCC claims
Here, we see that the diversity in the text of the Portuguese Civil Code, is presently turning out to be an useful mechanism, since the Catholics have the benefit of legal education about options during registration of marriage, in a compulsory marriage formation course by the Church, which benefit those registering civilly do not yet have. But the Usages and Customs have blatantly sexist provisions, that on the face of it, discriminate against women in the conditions for giving civil recognition to certain marriages.

Considering this, let us go down history lane to see how certain diversity was sought to be flattened, and certain diversity retained, and the lessons to draw as to whether we can at all look at either uniformity or diversity without using the lens of justice.

The Portuguese Civil Code of 1867 was extended to its overseas provinces, including Goa, by a decree dated 18th November 1869, and, in the said Decree, it was spelt out that the usages and customs of the New Conquests, as compiled in the respective Code of 1853, would be safeguarded in so far as not inconsistent with morality or public order. Portugal was then a constitutional monarchy.

In 1878, a Committee was constituted in Portugal by the Royal Order dated 31st May 1878, to recommend measures to promote the prosperity of those territories. This Committee then arrived at the conclusion that, as usages and customs are strictly connected with the rites and family organization of the Hindus, it is neither possible to completely abolish the usages and customs of the New Conquests immediately, nor to modify them beyond the limits permitted by beliefs and habits. The Committee also recommended that there has to be civil recognition to these beliefs and habits which are practiced not only by the 'gentiles' of the New Conquests, but also by those of the Old Conquests. The resultant revision and codification, by the Decree dated 16th December, 1880, which is deemed to be consistent with morality and public order, includes the sexist provisions written about earlier in this article. It seems that sexist provisions were not seen as inconsistent with morality or public order.

Upon Goa being integrated into India in 1961, the Goa Daman and Diu Administration Act, 1962, came to be enacted. The 1962 Act stipulated that the prevailing Portuguese laws on those subjects where Indian laws were not extended to Goa, would continue to apply. Therefore, the Decree of 1880 pertaining to Usages and Customs of Gentile Hindus of Goa, continues to stand on the statute book.

On the issue of permitted polygamy, Goa-based advocate, Dr. F. E. Noronha, is probably right when he states, "Although the provision exists, I can certify that in 37 years of practice, I

have read only once about a long-dead gentleman who indeed took on a second wife". The current Chief Minister, Pramod Sawant, is quoted as saying that the provision exists on paper but was never implemented, and that, by the passage of time, that section is redundant. So, there is an admission here that the Chief Minister recognizes the law continues to exist, and further, that despite the law, there is no practice of that provision. How then can it be said that the communal amity in Goa or lack of bigamous or polygamous marriages was achieved by the 'uniform' law? Surely, there must have been something else that achieved whatever communal amity there is, and that also ensured that there were no bigamous or polygamous marriages?

Also, what does the Chief Minister of Goa have to say about the concept of Joint Family in the same law (applicable only to all non-Catholics) – a joint family which is defined as the joining together of Gentile Hindus of either sex who reside in the same house and live within the same domestic economy? Is it to be repealed in the interests of 'uniformity'? Or does the retention of the provision embody some kind of assertion? And what might that assertion be? Or is that provision to be amended to make it gender just, considering that there is a sexist provision that the joint family shall be governed, managed and represented by the male member seniormost in age and having civil capacity.

Another attempt to flatten identities, was made in 1910, when the First Portuguese Republic issued a decree on the law of marriage, which came to be applicable to Goa in 1911. By this Decree, the Portuguese Civil Code which amended to, among other things, recognize marriage as a purely civil contract, as opposed to the provisions until then which recognized two forms of marriage, canonical marriage (which only the Catholics could opt for) and civil marriage. But, by the Decree dated 25th July, 1940, which came into force in Goa from 4th September, 1946, the law came to be amended, where, once again, canonical marriages were recognized. The recognition of canonical marriages continues to this day, under the law. So, here again, we see the Portuguese State reverted back to earlier provisions of canonical and civil marriages.

Thus, we see that the Goa family laws do provide civil recognition to different forms of marriage, and, for some, on sexist terms, and similarly there is also the concept of Hindu Joint Family, where again the provision for governance is sexist. We also note that efforts to drop the sexist provisions have not been successful under the garb of being under the realm of faith and beliefs, without measuring them with the yardstick of gender equality. So, what is the Government of Goa saying: that diversity should stay in the laws? If diversity should stay, which kind of diversity should stay? Should a diversity that discriminates between the genders stay? Or should diversity go? If so, which diversity should go, and for what reasons?

Merely saying that unjust laws are redundant, or not used, will not help. And in the meantime, we know from the above that communal amity, to whatever extent it has existed, has nothing to do with uniform provisions in the law. We also see that the partisan approach towards communities is being fomented by the nature of governance that is there. Therefore, whether or not the laws are uniform, communal amity or lack of it, is not dictated or disrupted by what the family laws look like.



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