



Code of Convenience: Politics of Uniform Civil Code

Goa's Uniform Civil Code or the expression "uniform civil code" seems to be bandied about by the ruling dispensation by convenience or as a band-aid for situations in which powers that be find themselves.

A recent news item (Indian Express 31/07/22) had the following caption: "Goa restaurant case involving Smriti Irani's daughter: Portuguese Civil Code cited in defence by owners". Another news item (Deccan Herald 30/07/22) had the following caption: Portuguese civil code to Smriti Irani's rescue in Goa restaurant controversy?

It may be recalled a complaint has been filed by Aires Rodrigues. to the Excise Commissioner, that the excise licence for Silly Souls Café and Bar, was issued, without a restaurant licence, and renewed in the name of a dead man. Newspapers have reported that at the first hearing following the show cause notice issued by the Excise Commissioner, the lawyer for the De Gama family whose father/husband held the licence, has claimed that the licence is to be construed as belonging to the wife too. If only this were really so! And in which case, it would mean that at the time of issue of the licence, the spouse would be subjected to the same scrutiny as the applicant, in terms of police clearance and the like.

As the law stands, the party seeking the transfer of licence in his/her name has to file an application with NOCs from other rights-holders, and it is only after such an application is filed and processed, that the licence can be 'transferred' in the name of the spouse who is (yes) the moiety (half) share holder (the co-shareholder), *and* the heirs (children, or brothers and sisters and their children). Nothing happens automatically.

A grieving widow and son or daughter are expected not to run the bar and restaurant, till the licence is renewed. This actually translates into a cruel joke on the widow and/or the heirs. It would have in fact been ideal if the business could be transferred automatically or construed to be in the name of the spouse as well, because, yes, as per Goa's family laws, the default system of a couple holding property is that the couple own all the assets together. But the ruling party which talks endlessly about Uniform Civil Code and Goa's shining example has done nothing to make sure that this is so construed. In fact, the provisions in the Excise Act, should have included, provisions for police check of the spouse as well, at the time of application for licence, and not provided that the licence is 'personal'.

There should, in fact, have been a logical corollary provision that at least as far as businesses are concerned, the spouse should have been automatically and seamlessly entitled to run the bar and restaurant, without stoppage of its functioning. However, this happens only selectively when the bar and restaurant is owned or benami-owned/run by prestigious

parties.



This is not the first time, that Goa's so-called Uniform Civil Code or the concept of Uniform Civil Code has been mobilised, by powers-that-be, not in the interests of the marginalized stake holders in the family, or in the interests of economically distraught families, but for selfish personal gains.

A few years ago, or in 2014 to be more precise, the Government by a notification in an *Extraordinary Gazette* of the Government of Goa, appointed Civil Registrars- cum- Sub Registrars and Notary ex-officio as Marriage Officers for the purposes of Special Marriage Act, 1954, which the law makers post 1961 consciously did not extend to the State of Goa. The occasion for this extension was again the marriage of the daughter of Harish Salve, amicus curiae in the mining petition in the Supreme Court and otherwise counsel to mining firms, and a Hindu, to a Muslim man. At the time, the Bharatiya Janata Party leaders were quoted as saying that this notification is about national integration since it was about a Special Marriage Act which is applicable across communities. Pray can national integration be forged by imposing a law called Special Marriage Act on Goa, when Goa has its own Civil Registration Code applicable (and not optional) to all communities, for purposes of registration of marriage? And that too without going through the portals of the legislative assembly of the State of Goa? Or is this strangely a metaphor for how Goa has been and is being integrated into India and an uniformity is being imposed to flatten diverse cultures, without at all seeking to bring all cultures in alignment with human rights?

It was again Aires Rodrigues who had sought revocation of the marriage certificate of Harish Salve's daughter Saaniya and Arman Siddiqui, apart from challenging the notification appointing marriage officers under the Special Marriage Act, without the Special Marriage Act being extended to Goa. The Judges instead of taking on the issue at hand, went into a technical spree on whether or not Aires Rodrigues' petition could be called a public interest litigation, leaving a issue that deserved the attention of the High Court of Mumbai at Goa, completely and conveniently unattended. On the other hand, a highly placed officer in the Law Department of Government of Goa had said, "whether wrongly or rightly, the State has enforced this Act. If someone feels differently, he can challenge it". In a scathing article in the Herald in April 2014, titled 'Goa's Uniform Civil Code under Threat', Mr. P. V.S. Sardesai, retired as Registrar and Head of Notary Services, Government of Goa, had questioned this absurd notification.

At another level, the basis for dismissing the plea for revocation of the marriage certificate, was that the marriage between the parties "is a private and personal affair between them and no third party can have any say in the same, especially any fall out or consequences of

the marriage are entirely borne by the said two parties of the marriage or at the most their family” and “No public is in any way affected either by the marriage or consequences arising from that marriage”. But then, if this is so, why should the Courts at all be asked to intervene in the matters of people’s marriages, where the parties to the particular marriage are not the petitioners before the Courts? Has not the Central Government, used the fig leaf of public policy, saying that uniform civil code is a matter of public policy and thereby hidden their lack of interest in actually addressing the injustices of family laws, and thus keep the words Uniform Civil Code on a constant pot-boiler?

The above two instances, namely that of invoking Goa’s ‘Uniform’ Civil Code to the rescue of the powers that be running the Silly Souls Café and Bar and the marriage registration of the daughter of advocate Harish Salve, whose guidance the Goa Government continues to seek in mining matters, are two glaring examples of how Goa’s so-called Uniform Civil Code or the expression ‘uniform civil code’, have been conveniently used or bypassed, to in fact bypass the rule of law, for powers-that-be. While little or nothing has been done, to generally address the inadequacies and the discriminatory provisions in this ‘uniform’ civil code, or the lack of synchronization of the positive provisions of the Code with other Goa laws like the Goa Excise Duty Act, the Land Revenue Code, the Goa Mundkar (Protection from Eviction) Act, the Panchayat Raj Act, the Goa Co-operative Societies Act, or the national laws like the Companies Act, the Partnership Act, the Shops and Establishment Act.

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