

By ALBERTINA ALMEIDA



The Resonances with Goa of the Louisiana Civil Code: A Tribute to late Adv. Manohar Usgaonkar
I was drawn to read the Louisiana Civil Code, when at the meetings of the Family Law Review Committee constituted by the Government of Goa to update and review the family laws in Goa, late Adv. Manohar Usgaonkar would often allude to it. What might this Code be? What significance did it have for Goa?

Louisiana is one of the fifty states in the United States of America. But it has had a different legal and political history. It has been alternating under French and Spanish rule, and was finally sold to the United States by Napoleon by a treaty of April 31, 1803. The attempt to introduce the common law system prevalent in other states was strongly resisted by the people of Louisiana. Therefore the Louisiana Civil Code was retained in its entirety, because given the civil law system, there was a detailed composite layout with aspects relating to contracts, sale, gifts, etc. It did not then have to depend on Judge made law.

Cut to Goa. Goa was integrated into India in 1961 and by an administration act of 1962, many laws from India were extended to Goa, but the various family laws applicable to the rest of India were not extended with the understanding that we already have realized the directive principle of Uniform Civil Code. So why regress? Thus it is, that the family laws came to be retained. However, the civil law system in which they were functioning, that is, the system that allows for the judge to interpret and apply an otherwise lucid law, was withdrawn, and the British common law system, where precedents on the matter are set by High Court or Supreme Court was introduced. This means that at the trial courts, judges now started looking for High Court and Supreme Court precedent cases. But first of all from the cases that go to court, very few have the staying power to go through the motions of appeals and writ petitions in the High Court, and Supreme Court, as a result of which there is no critical mass of cases that has interpreted the Goa laws.

This means that with no substantial amendments being made in the law, and also little interpretation, the law has in some ways got stagnant. If a woman complains that she does not have access to the marital properties, and the male spouse dangles the properties in front of her with the managerial powers given by the Code, that is not an issue that would have resonance in Supreme Court cases, because marital property is not a concept that is present in the family laws, religious or secular, in the other states.

Our courts are also supposed to be courts of equity, which means that they are required to have a positive bias in favour of disadvantaged sections of society, but sadly, trial court judges do not exercise this jurisdiction of equity. Many of them want a precedent to fall back on.

It is for this reason that it is necessary to have a detailed introspection as to how to effectively combine the civil law system and the common law system, in which the family law was housed, and that too as a composite code, dwelling on various other subjects of civil law. The Resonances with Goa of the Louisiana Civil Code: A Tribute to late Adv. Manohar Usgaonkar

Given that other civil laws from the common law system are also existing, there is also need to harmonise the laws because, as Adv. (Dr.) F. E. Noronha rightly puts it, the family law has a bearing on the other laws, and the other laws have a bearing on the family laws.

So, for example, the mundkar act, says mundkarial rights are heritable, and yet describes the mundkarial family in a way that is not compatible with Goa's family law, in stipulating that the mundkarial family comprises of the wife, unmarried daughter, son, and includes father, mother, grandson, widowed daughter, widowed granddaughter, solely dependent on the mundkar for maintenance. Where the legislators failed, the higher judiciary has stepped in, but very inadequately. The High Court of Bombay has held that a married daughter living with her parents with a fixed habitation is entitled to mundkarial rights. This is still discriminatory, as the clause of having to live with the mundkarial parents is not applicable when it comes to the son. So either the requirement of living with parents should be dropped for all, or it should be applicable across the sexes -preferably the latter given that this is a beneficial legislation. A Code would ordinarily have brought all these various aspects together, since they are part of a composite law.

This is besides the fact that gender-based and other gaps found over time in the laws, need a relook. Any discussions on 'uniform civil code' across the country, would therefore need to factor that Goa was not part of the Constitution making process of India, but surely adopted the Constitution and its values. However, in so far as the provision on Uniform Civil Code in the Directive Principles of the Constitution, it would perhaps be imagined differently given different legal systems prevailing in the state of Goa. As Joseph Minnatur, writing in the Journal of Indian Law Institute, rightly posed the question in the context of Goa and Pondicherry, "Unification of laws is desirable, but should unification be achieved by depriving a minority of states of their own system of laws?" This is an open ended question, which it is time to revisit again. Perhaps, pose it as what could be the amalgam that we have to bring between the common law system and the civil law system in which Goa's laws during Portuguese rule, and which are still applicable, were housed?

Carrying forward this discussion is, to me, a meaningful tribute that can be paid to Adv. Manohar Usgaonkar, who has always been struggling with drawing from resonances from the Louisiana Civil Code. Even if he would not acknowledge agreement with one's views when they were first aired, he also had the humility to think it through and consider the issues that were being raised as he went along and recognise that even if he was a senior counsel, there were others with other kinds of experiences to bring to the table.



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