

Family Laws of Goa- Proposals for Reform in View of Global Age.

Following is project suggested

Introduction

Compared to most of the other Personal Laws of India, the Family Laws of Goa are in certain respects a bit more appropriate to the present age. However, there are problems with the laws in certain areas, and there is a need for reforms to suit to the changing attitudes, family life styles etc. in the new global age. Besides , the Family Laws of Goa are interesting from Indian viewpoint for a Comparative research as they are based on the Continental System and are worked in the Common Law System.

Family Laws of Goa

Consist of provisions from the Portuguese Civil Code of 1867, Law of Marriage of 1910 , Laws of Divorce of 1910, Decree of 1945 applied to Colonies based on the Concordat and some other provisions as amended up to 1961.

Importance of Purpose of Research

- (1) The Family Laws of Goa are based on the Portuguese legal provisions as existing in the year 1961. The legal provisions have been continued , without any new enactment or amendment . It is to be noted that in Portugal, these laws were amended. Hence the Family Laws of Goa, need certain reforms.
- (2) The Family Laws of Goa were enacted under the Continental System and are enforced in Common Law System, within the Indian procedural regime. Hence it is interesting to analyze the dynamics of how laws drafted in Continental System are enforced in Common Law System,
- (3) In spite of the fact that there have been no reforms through enactment for the last fifty years, some changes did take place especially under the case law system. Hence one can get insight into the de facto working of this hybrid system.
- (4) The enactments of Family Laws of Goa are in Portuguese, and in spite of the fact that there are no official English translations, they are enforced by courts with English as the predominant language. Hence the laws are a fertile ground for comparative research.
- (5) In the Indian subcontinent, there are a number of Personal Family Laws in force, for instance for Hindus, Parsees, Muslims, Christians, etc. So there is an ongoing debate for reform. Often the Family Laws of Goa, which are fairly uniform to all sections of society, irrespective of their religion, have been cited as models.
- (6) However in order that the Family Laws of Goa may provided a model Family code for India, it is necessary to suggest reforms in view of new developing ideas on feminine jurisprudence, family courts, family psychology etc. Hence it is imperative that the Goa Laws are studied in comparison to Family Laws prevailing in Europe and elsewhere in India..
- (7) There is a move to bring about a new enactment in English titled Family Laws of Goa. As Goa has experience of Continental and Common Law Systems, the enactment can be turned into a model code for India. For an ideal code it is necessary to compare it to the Family Laws elsewhere in the World.

- (8) Research in Family Laws in Goa can help to understand how Civil Law and Continental Law systems work, and whether they can approach each other, which is very important in the global age.
- (9) Goa has witnessed the Continental system and later the Common Law system and many lawyers practicing in the area of family Laws in Goa , are well versed in both the systems and use these methodologies in their practice . Goa has been the meeting point for the two major systems of the World.

Problems and issues

Though as compared to other personal laws in India, Goa Family laws are considered relatively suitable to the society , there are several problems and issues concerning the topic.

- (1) Goa Laws are cited as exemplary for containing Matrimonial Property Regimes. The provisions about these regimes have changed in Portugal. Hence it is necessary to analyze those provisions in light of new concepts developing in the west about Matrimonial Regimes.
- (2) In Goa certain provisions based on Concordat are still in operation. One such provision is that Canonical marriages are not entitled to divorce. Though this provision has not been repealed, fortunately the Courts have declared it as unconstitutional and hence ultra vires.
- (3) Canonical marriages still continue to be annulled by the Church authorities, and the annulment is legally accepted on confirmation by the High Court.
- (4) Registration, a strong point of continental system has been diluted in Goa, under the existing pattern. There is a debate whether the earlier system should be put again into operation. However in the global age, it may be essential to analyze the latest marriage registration systems.
- (5) Contentious divorce is being fought under the accusatorial system, with consequent damage to the social fabric. It is necessary to find the latest development in marriage laws about family courts.
- (6) There are certain gender biases in law, which need to be analyzed in view of the new concepts in feminine jurisprudence.

Methodology to be used

Analysis of principles of family laws , legal provisions as found in European Continent with special purpose of suggesting reforms to the Family laws of Goa. Also interviews with legal experts in Europe will be used to supplement the study.

Content of Project

- (1) Personal laws of India (including Hindu law , Muslim Law , Special provisions for Parsees, Christians etc.)
- (2) Family Laws of Goa
- (3) Case law method in Family Laws
- (4) Concepts ,Principles and provisions of Family laws prevailing in Europe in order to suggest reforms to Family Laws of Goa

(5) Analysis of Continental Method used in Family Laws such as authoritative writings, organizations, registration system, family courts system etc. in order to suggest reforms to Family Laws of Goa .