

Family Laws of Goa – Research And Reforms
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Following article is posted to give an insight into possible research areas on Family Laws of Goa.

A Western Region Workshop on Family and Property Laws of Goa was organized by V.M. Salgaocar College of Law .The Workshop was held at the premises of the sponsors, Fundacao Oriente . The objectives of the Workshop were: (a) To familiarize the teaching faculty especially of the two Law colleges with the family and property laws of Goa. , (b) To prepare a blue print for dissemination of information and preparation of relevant material for study , (c) To identify the concepts and principles of Family Laws of Goa ,which can be useful and relevant to the Indian conditions, and (d) To identify the areas in Family Laws of Goa, which can be incorporated in the academic syllabus of the Indian Universities.

For a fruitful discussion, the presenters and participants were selected from different sections mainly judges, lawyers, NGOs and academicians. Some of the academicians came from different universities and colleges of Western Region of India.

The methodology adopted consisted mainly of short and brief presentations, followed by a session of question answers and group discussion. As a result each and every participant in the seminar was actively involved and was able to react and contribute to the proceedings. The Workshop was inaugurated by Dr. V.B, Coutinho, Vice chancellor of Gulbarga University and was addressed by experts. Adv. Elgar Noronha presented a paper on Concepts and Principles of the Portuguese Civil Code , Dr. Alvaro Noronha Ferreira addressed the group on Laws of Marriage and Divorce , Adv Mario Bruto Da Costa explained Succession under Family Law of Goa and Senior Advocate M, S. Usgaocar discussed Property Laws of Goa. The presentations were later thoroughly discussed in the groups.

Here are some suggestions that are the outcome of the workshop.

Civil Law Institute

One of the important observation was that it is necessary to teach the Civil Law System in our legal institutions , due to its growing importance in international and other fields. If Goans are to look for better placements in International Law it is high time to be aware of the methodology used in Civil Law countries. It was suggested that in Pondicherry there is Civil Law institute set up with French collaboration. It would be ideal to have one such institute in Goa. Perhaps it could

be named after Dr. Cunha Gonsalves, eminent legal scholar from Panjim, who wrote a treatises of dozen books or so on the Portuguese Civil Code. Senior Advocate M. S. Usgaocar pointed to the participants the contribution of Cunha Gonsalves. Goa earlier being under the Civil Law system and having switched to Common Law possesses a rich experience of the two systems. While the two systems today are attempting to come closer, Goa could be one of the most fertile places for research. For instance one could conduct research to find out the impact of law drafted in Civil Law system, when it is operated in Common Law system. Besides, Goa has a set of excellent judges and lawyers who have worked under both the systems. Their experiences could be a valuable contribution even in terms of international research. One can be sure that foreign scholars will flood Goa, once they are aware of this rich heritage and an institute is set up. It is necessary to tap this especial brand of legal heritage, before it is too late.

Research on Hindu Law

Gulbarga University proposes to put a Chair on Mitakshara, in memory of the great scholar who lived in that part of the region. The Government or the Goa University following the example of the Gulbarga University, must at least carry out a Research Project on the Hindu Law available from the Portuguese Records in Goa. Perhaps Goa has the earliest western system codification of Hindu law with the Codes of 1853, 1880 and even earlier legal provisions of eighteenth century. These are valuable legal and cultural heritage of our past recorded in Portuguese language and can supplement the knowledge of Hindu Law now available.

Religious Marriage

The Catholic Church could carry out their own research to find out whether it may be necessary and practicable to delink religious marriage from civil marriage, restoring it to 1910-1946 position. Thus there could be a solemnization of civil marriage for the Catholic too in the Civil registrar. For religious purposes Catholic Marriages could continue later in the Church. After a due study the Church could then offer a suggestion to the Government, thus bringing uniformity in family laws on celebration of marriage.

Annulment:

The Catholic Church could carry out their own research to find out whether it may be necessary to delink the process of annulment from civil consequences. The women organizations have certain problems when the annulment process as it deprives a wife from her suit for divorce and as a consequence loses her moiety. Annulment though in one hand is a power it can be a liability. Annulment once delinked, it will become a civil affair, with the area perhaps growing with

the case law system under the mantle of the judiciary. Once delinked it will set the Church free from the State and vice versa. Catholic annulment could continue for the religious purposes.

Bigamy

There appears to be an odd provision for bigamy for a Hindu male in Family Laws of Goa, permissible under very rare situations. This is a remnant of a Code of 1880 for the Hindus. The Hindus have not used the legal provision on bigamy for several decades. Hence they could set a committee to study whether it should be done away with. It is to be noticed that such provision is not available in the rest of India. This provision though it appears to exist only in paper needs to be repealed if necessary.

Adoption

The law of adoption for Catholics may have to be enlarged in keeping with the modern Hindu Law in India, where one has option to adopt a son if he does not have one and also a daughter if he does not have a daughter. Similar provision may be made available to a childless couples under Goa laws.

Joint Family

One needs to carry an in-depth research into the provision about the joint family in Goa, and why the Portuguese conceded this facility to the Hindus in Goa. If the system does help to maintain unity within family, it could be said to be a desirable provision. Possibility of optionally extending to others may be considered as object of research.

Family courts

The concept family courts as pointed by Dr. V. B. Coutinho, need to be strengthened. Goa could provide excellent model of Family Courts in order to strengthen and preserve marriages. Latest methods of counseling etc. can be incorporated to prevent unnecessary damage to the family fabric.

Family Bonds

It is good to research the existing laws in various fields from the angle of Family bonds and whether the legal system strengthens it or rather favors disintegration of family units. Reforms could be suggested in various laws to strengthen the family bonds.

Divorce

While Divorce is a legal remedy to put an end an undesired marriage, a note of caution should be exercised while giving divorce. Judges, legal practitioners,

councilors, social workers and litigants could adopt methods to minimize the impact of divorce on the fabric of family , society as well as on both the spouses. Law could have certain provisions to secure such an end.

Hardship to Women

In any law under the present conditions, any hardship caused to women should be reasonable taken care off by reforming the law if necessary.

Matrimonial Regimes

It is necessary to research into the use of Matrimonial Regimes in any family law system. Since matrimonial regimes exist in the Family Laws of Goa, it is a good point for study of its usefulness in Indian conditions. One may have to collect case studies of several divorced women in Goa and India for a comparative study, to find utility or otherwise of matrimonial regimes. The question whether any especial provision is required in the Family Law of India as regards distribution of assets in case of divorce is an important point for study.

Registration of Marriage

Greater attention should be paid the registration of marriage. Perhaps the system in Goa has been diluted over the years. Attention to be paid right from the officials, infrastructure, equipment, buildings, to forms and legal provisions. Compulsory registration of marriage does not exist in most of the Family Laws of India, except Goa.

Wife as successor

Though the wife often gets half the share in case of community of assets, the question that she does not figure as heir at earlier stage could pose certain problems. There is a need to analyze whether the wife should figure at a earlier stage as successor to her husband.

Concluding Remarks

Family Laws of Goa is an interesting area for research in view of Art. 44 of the Indian Constitution as well as due to the new changes in the teaching Family Laws of India, envisaged in the latest Law Curriculum set out by the Bar Council of India.