

ACHIEVING GENDER NEUTRALITY IN GOA: A STEP TOWARDS FEMINISM

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ABSTRACT

Goa is the only state in the territory of India ensuring Uniform Civil Code to the residents. The Goa Civil Code is based on the Portuguese Civil Code, 1867, wherein personal laws are absent. All the religions are governed under the same statute. Due to the implementation of Goa Civil Code, it ensures uniformity to all the residents of Goa and leaves no scope of biases or conflicts. However, there are certain laws, such as related to bigamy, adultery and matrimonial property that create rift between the two genders. Despite high literacy rates in Goa, resistance to change is visible in the state. The Law Commission of India has also failed to propose the desired recommendations to bring gender equality in the state of Goa. It is very pertinent to bring changes in the existing laws which are a major drawback for the evolution of women in Goa. Discrimination in uniformity seems difficult to co-exist, however, this situation is prevalent in the territory of Goa. Equality seems to be left away on the way to uniformity. This implies, that imminent action is necessary for tackling these prevailing problems. Thus, there is a need to bring reformation in these existing laws which create obstacles in the path of empowerment of women. Hence, women need to actively participate in campaigning their rights as presence of these biased laws show that a long journey is pending for the women. The article focuses on the necessity of creating awareness among women to bring a substantial change in their present state.

Keywords- Goa Civil code, Feminism, Bigamy in India, Gender-Biased Laws, Gender Neutrality, Women Activism.

INTRODUCTION

The Supreme Court judges, Justice Deepak Gupta and Justice Aniruddha Bose asserted the urgency of implementation of UCC in India. (Anand, 2019) Article 44 of the Indian Constitution 1950, mentions that the state's policy is to secure the citizens of India a uniform civil code. Goa is the only state in the territory of India ensuring UCC to the residents. The Goa Civil Code is based on the Portuguese Civil Code, 1867, wherein personal laws are absent. All the religions are governed under the same statute. Due to the implementation of GCC, it ensures uniformity to all the residents of Goa and leaves no scope of biases or conflicts. It presents uniformity being equated with equality. However, in the case of Goa, uniformity is based on discrimination. Presence of biased family laws, incompetence of the judiciary as well as the legislature to resolve local issues, arising jurisdiction conflicts reflect that uniformity is not always a boon. It comes with its share of flaws.

The article shall discuss and inspect the dimensions of GCC in Goa concerning gender discriminating laws in the state. It shall reflect upon the local issues and the effect of these laws on the female society. The role of women activism for the upliftment of women in the society shall also be discovered. It is pertinent to apprehend women's experience concerning democratic organizing. Endless efforts from the part of women urge that it's high time for assuring gender equality in the state.

Recent landmark judgments, such as *Indian Young Lawyers V State of Kerala* (*Indian Young Lawyers V State of Kerala*, 2018), *Joseph Shine V Union of India* (*Joseph Shine V Union of India*, 2018) and *Shayara Bano V UOI & Ors* (*Shayara Bano V Union of India*, 2017), portray the essence and the need of gender equality in India. Hence, the need and urgency of rectification in the existing laws will be reflected upon in the article as well.

AN OVERVIEW OF THE GOAN LAWS

Goa went through an array of rulers from Ashoka's Mauryan Empire to Kadambas, from Hindu Vijaynagar to Adil Shahs of Bijapur. (Lonely Planet, n.d.) It has experienced a lot of variations. Goa was under the Portuguese regime for about 450 years. It has left a great political impact on Goa which differentiates Goa from the rest of the states of the country.

Goa is the only state in India which follows a uniform system. The uniform civil code is referred to as Goa Civil Code (GCC). It implies that a uniform structure has been adopted regardless of any gender, caste, religion or any other grounds. It is governed by the Portuguese Civil Code, 1867. In the year 1961, Goa became a part of India by the Goa Daman and Diu Administration Act 1962. The government of India recognized and authorized the application of the Portuguese Civil Code, after subject to certain amendments. Hence, the residents of Goa belonging to any religion are subject to the same laws of marriage, divorce, and succession with few exceptions. Thus, the civil status of a Goan woman is different from that of an Indian woman.

GENDER NEUTRALITY CONCEPT

According to Merriam Dictionary, gender neutrality refers to neither of the two sexes, implying a person in general. Gender-neutral laws refer to unbiased law concerning male and female. It is a concept which helps to propagate and achieve the ambition of feminism. Feminism, refers to the advocacy of women's rights, on the ground of the equality of sex. As per the Cambridge dictionary, feminism refers to giving a woman the same social, political and economic rights as that of a man. Gender mainstreaming is an essential element for the promotion of gender equality. Mainstreaming is beyond the scope of increasing the participation of women. "It means exhibiting the experience, knowledge, and interest of women and men to bear the development agenda." (Vijayan, 2014)

However, gender justice, i.e. a step towards gender equality remains a mirage. The laws tend catering to the needs of men. The essence of a patriarchal society can be easily felt even after 72 years of independence. In the case of Goa, where uniformity prevails, the effects of biases are still visible. Thus, the grounds of discrimination are discussed under the next heading.

GENDER EQUALITY-UNFINISHED IN GOA

"A gender-equal society would be one where the word 'gender' does not exist: where everyone can be themselves."ⁱ Goa is the only state in India which contributes maximum efforts towards bridging the differences between the two genders (male/female). However, there remain a few

glitches in the existing laws which dissolve the very essence of gender equality in the state of Goa. Even after, the hard work of the institutions involved in bringing the change, no considerable step has been up taken to resolve these issues. Empowerment and protection of the rights of the women is the very need of the hour. It is essential not only for the development of the society but also for evolution and integrity of the female gender. The Portuguese Civil Code is a classic example of adopting and implementing laws that help to maintain and propagate gender-neutral laws, however, traces of the patriarchal society are still visible in some provisions of the law under the Portuguese Civil Code. The gravest issue is that the torch-bearers of justice, the law reformers of the law commission appointed by the government have failed to highlight these prejudices against women. (Almeida, 2014)

Adultery- After the landmark judgment of Joseph Shine V UOI, it created a sense of equality among the citizens of India. Adultery was made a ground for divorce for both of the genders. However, the Goan law differs from the judgment of the court. In the case of Goa, adultery is a ground of biases between the two genders. Adultery is a ground for divorce available to both the spouses (Article 1204 of the Portuguese Civil Code). While adultery by wife amounts to a ground for divorce, the adultery by husband should be specific.ⁱⁱ This article though attempts to maintain equality, however the specific ground, to prove adultery a ground for divorce for men, infringe the stability of the law between husband and wife. Moreover, there also lies an exception in the uniform laws of Goa.

Under Hindus, adultery by the wife is the only ground for divorce in Goa. Hence, this law shows that even after being freed from the regime of Portuguese for more than 450 years, we are still unable to break the chains of the male driven society. Women are unable to get a share in the common property of the spouse if the wife commits adultery in marriage. She bears a right only for maintenance after the divorce of the couple (Article 1210 of the Portuguese Civil Code). Hence, this law shows, the failure of the statute, to fulfil one of the very essential ingredients necessary for a peaceful and just society. Goa, being one of the most advanced states in India, with a high percentage of literacy levels between both men and women, fails to bring uniformity between the genders, where the offense is the same, and however, the punishment varies. According to Aristotle, justice is what a person deserves, however in the case of Goa, a man deserves more leverage than women. Under the same ground, both the sexes are treated unequally.

Matrimonial Property- Matrimonial Property refers to the property owned by either husband or wife, or both of the spouses. The marriage under the Goa civil law is governed by the system of communion of assets, wherein the assets owned by both the spouses before the marriage becomes a common pool, and after divorce/separation/ annulment of the marriage, the assets are distributed equally between the two. Everything by far seems too good, however, with great privileges comes great prejudices. Though the ownership and possession of the property rest in the hands of both the spouses, the administration is based solely on the discretion of the husband (Article 117).

The husband is guaranteed under this statute to administer and manage all the assets belonging to the matrimonial estate without any disruption from the wife (Article 1189). The wife, in the absence or impediment of the husband, still doesn't have the complete authority regarding the administration of the property, and is required to follow a proper procedure according to article 1190. The existence of these laws, try to portray the lack of trust in the competency of women. Uniformity implies the same treatment of everybody under the umbrella, however, the Goan laws fail to maintain equality even on the same pedestal.

Bigamy- Bigamy, the practice of having two wives at the same time. In India, polygamy is permitted under the Muslim law, however, it is strictly prohibited under the Hindu Law. The position is quite the opposite in the case of Goa. Polygamy or bigamy of any form is strictly prohibited in the territory of Goa; however, bigamy is allowed under the Hindu Law (the exception to the GCC- Family Law) under special circumstances.

The men under Codes of Usages and Customs of Gentile Hindus of Goa have the right to bigamy. The grounds are that if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30, the husband has the right to marry another woman (bigamy). The existence of these unjust and unreasonable laws proves the maturity level of the society. In a progressive world, where the advancement of ideas and beliefs is the main ideal, we tend to take a step back due to these prevailing laws. In the present scenario, options such as adoption, surrogacy, IVF is open to parents. The need and the validity of these laws need to be questioned and frowned upon. A woman unable to conceive a child doesn't amount to gross moral turpitude. Hence, this law is a gross injustice to a woman.

LOCAL ISSUES

Goa has become a hub of local issues of female feticide, domestic abuse, and sexual harassment which are not been taken seriously in the state of Goa. The alarming decrease in the sex ratio has been neglected, moreover, there is a significant increase in the reported cases of domestic violence in Goa. (Goa's Sex ratio issue needs to be addressed, 2013) Unfriendly police stations, lack of support system, are many of the contributing factors towards the increasing problems in the state of Goa. It is considered as a great holiday spot and one of India's best tourist spots, which draws large numbers of foreigners as well. Goa generates its revenue through tourism, but "great power comes with great responsibility." In Goa, cases of rape against women cases have begun to rise at an alarming rate that threatens the safety not only of tourists but also of Goan women. (Sheteya, 2018)

Though Goa is considered to be one of the developed states in India as well as ensuring the safety of women, stats claim that 13% of married women have faced spousal violence. (Sheteya, Times of India, 2018) Spousal violence is significantly related to pregnancy termination. (SL, 2016) Due to the increased number of spousal violence, it reflects upon female feticide leading to a decline in the sex ratio of the state. It is one of the major factors contributing to the significant decline in the sex ratio of the state. Spousal violence also affects the mental health of the women. "Anecdotal evidence suggests a lack of efficacious psychosocial support within Goa, and health service interventions, although effective, are difficult to implement in low-resource settings." (Domestic Violence (The Safe Study), 2018) A study was conducted by Sangnath University, wherein the majority of the cases of spousal violence, the male party involved had drinking habits. In Goa, though there is a high literacy rate among girls, the sex ratio is 920/1000. (Domestic Violence (The Safe Study), 2018)

Therefore, these factors help us to determine that the government's existing laws and schemes have failed to provide women with a safe and healthy climate. Women are subjected to violence and unjust behaviour. Women's empowerment has been slacking in Goa. Though equality is not a far-fetched ambition, the safety and integrity of women are foremost essential. Moreover, these factors only in the long run will create a platform for the elimination of the social stigma

of inequality. There is a need for the government to adopt strict measures ensuring the protection of the dignity of the women in society. Health and safety conditions are the foundation of the essential feature needed to thrive in a society. Besides, there is an urgent need to focus attention on the rise in the rate of spousal violence in Goa, one of the key factors responsible for the declining sex ratio in Goa state.

GOA CIVIL CODE- A HYPOCRISY?

Discrimination in uniformity seems difficult to co-exist, however, this situation is prevalent in the territory of Goa. Equality seems to be left away on the way to uniformity. Goa Civil code is based upon the Portuguese Civil Code, 1860 which states that uniform laws will apply to all the religious groups and communities. Through this, the situation seems ideal, to reduce conflicts between the interests of different parties, the reality remains forlorn. This society seems perfect, however, there are major setbacks and drawbacks of the application of GCC in the state of Goa.

Goa Civil Code is questioned by many of the experts because of the failure of achieving its aim, i.e. achieving uniformity in variety. It remains hypocrisy and an unattainable ambition due to the laws, as discussed in the previous section. The existence of these laws shows the vulnerability and the incompetence of both the government and the society to tackle this unevenness. The purpose and the validity need to challenge, as they fail to fit in the frame of uniformity. Uniform Civil Code seems a far-fetched dream. Issues related to matrimonial property, adultery and bigamy laws destroy the very essence of dreams of the legislators. Does the application of GCC in the territory of Goa smoothens the roughness created due to the application of personal laws? The answer seems to be quite sensitive. Though there can be no denial in the fact that Goa has endeavoured immensely in bridging the gap between the two genders, however, there exists a train of thoughts to be dwelled upon.

One of the most significant steps has been taken by the judiciary towards the dissolution of the unjust grounds of discrimination of women. The divisional Goa bench of the Bombay High Court, Justices R D Dhanuka and Prithviraj Chavan, struck down Article 19 of the Portuguese law. “This law gave legal sanctity to the church concerning marriages and divorces of Catholics”. (Goa: Article 19 of Portuguese law on marriage, divorce struck down by HC, 2019)

Thus, it was a bold step on the part of the Judiciary towards eradication of the biased laws, however, the journey is not yet complete.

The main question arises, that whether the application of UCC in the state of Goa has been beneficial for smoothening the edges. The answer to a very extent is in affirmative, however, some doubt still lingers. GCC to a very extent has been successful in achieving its very objective, thus, scrapping off GCC would be an act of idiocy. There is an urgent need to bring amendments in these laws which create discrepancy between the two genders. These unjust laws need to be thoroughly analysed and rectified, which will help to bring equality in uniformity.

WOMEN ACTIVISM: THE NEED OF THE HOUR

“Emancipation of woman will be possible when a woman can take part in production on a large, social scale, domestic work no longer claims anything but an insignificant amount of her time.” (Engels, 1884)

“Evolving laws for women, whether for preventing atrocities on them or for gender justice, have always encountered problems and opposition.” (Gandhi, 1996) Unequal power, doesn't exist in the society until there exists a realization of such power. Women need to identify their potential and solutions to the deep penetrating patriarchal evils embedded in society. Succumbing to such provisions, portray the incompetence and incapability of women. In today's era, where women are undertaking radical measures and partaking in all activities to stand at an equal position as that of men, it also creates the necessity of voicing their opinions. It is the impact of opinions that brings change and lasts, as the opinions don't work in isolation. An individual brings a change; however, a community brings a transformation.

Women activism stands for women taking active stands for their rights. It refers to women taking active participation in voicing their opinion as well as the other succumbed voices of females, towards bringing radical change in the existing position and rights of women. Democracy is a form of government which provides an individual an opportunity and scope of

voicing one's opinion. In India, a citizen has the right to freely express his thoughts, opinionⁱⁱⁱ, subject to certain restrictions. However, a women's contribution is rarely to identify and acknowledged. This is an urgent and important need that is required to be fulfilled.

The position of women concerning the biased laws in Goa needs to be changed and transformed in a way that puts both the genders at the same pedestal. In Goa, the women are welcoming the cabinet's approval of amending the Factories act 1948, to permit the women to work at night. (Goa: Women activists welcome night shifts for females, 2019) In Goa, women activists have brought considerable changes in the Goan laws, helping in the development and empowerment of the women in the society. One of the most significant organizations working immensely towards empowerment of women is Bailancho Saad.

Bailancho Saad is an organization that was formed by a group of women in the year 1986, since then, they have been working tremendously towards ending the patriarchy in the society of Goa. It is a classic example for the women in Goa, that a few can bring significant change in the society. Hence, women activism, i.e. participation of all the women of the Goan society needs to stand against these prejudices, as it is the need of the hour. Moreover, voicing their opinions to the government for the sake of taking strict actions against the arising local issues needs to be emphasized. Patriarchy can be removed from the society not only through amendments in-laws but also through alterations in the mentality of the individuals of the society. A society is progressive and advanced only if the citizens are well-informed about the reality.

CONCLUSION

Patriarchy is not an incurable disease but it is a stain which washes away in quite some time. With the increased level of opportunity and platform available to the women in the society, now it's the time for them to take the reins in their hands. India is governed by the constitution of India, there exists a drive for the states to establish equality^{iv}, in every possible scenario. Feminism needs to be global; it should find its way even into the deeply buried roots. Goa is an impressive example, where the attempt to bring uniformity has been successful to a quite extent. However, some gaps persist, that require attention and efforts of all the parties existing

in the society. The presence of biased adultery laws, matrimonial property laws, bigamy laws showcase that there hasn't been a significant advancement in the mentality of people. It is very important and necessary that the situation needs to be rectified.

The government and the judiciary need to actively participative in the movement of women empowerment. Women's empowerment is possible only when the society is willing to accept radical change. Women activism is foremost the essential required to take a progressive step towards gender equality. It is evident today that considerable steps are being taken by all, not only to strive gender equality but also for maintaining the integrity of women in society. An increase in the number of crime rates, declining sex ratio, create an inhospitable environment for the development of women. The attention needs to be more focused on self-preservation than advancement.

Hence, for achieving any goal, sincere efforts collaborating with support amounts to recognition and victory. Presence of these biased laws show that a long journey is pending for the women. It attempts to highlight the need of the hour that women need to start putting forth their views in front of society in a way that creates sensation and awareness about the injustice against women. Hence, to bring changes in the existing laws for gender equality, women need to start actively participating in the processes. Also, efforts on the part of legislators and judiciary should be taken to remove the imbalances created due to biased laws.

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ⁱ This quote is given by Gloria Steinem. Gloria Steinem is a renowned American feminist and journalist.

ⁱⁱ Under article 1204, adultery by man should be of scandalous nature or complete abandonment of the wife, or keeping a mistress in the conjugal domicile.

ⁱⁱⁱ INDIA CONST. art. 19, cl. 1.

^{iv} INDIA CONST. art. 14.