APPENDIX- 7

Goa’s Civil Code

There is no question that over 400 years of Portuguese rule have left an indelible imprint on Goa. We see the colonial period reflected in its Iberian architectural style and in many of the customs and traditions of its people. Perhaps the most valuable living legacy left in Goa by the Portuguese is a codified system of Law: the Portuguese Civil Code of 1867 and the Code of Civil Procedure of 1939, which encompass the entire spectrum of Civil Law. The Portuguese legal system is a civil law or continental legal system, based on Roman law. It is similar to other civil law legal systems found in other European countries such as France, Italy, Spain and Germany.

It is a codification divided into four sections. Part I contains Articles 1 through 17 delineating the basic provisions of the Code, the most important of which is Article 7, which establishes the principles of racial and gender equality. Part II further develops these provisions. Part III deals exclusively and comprehensively with property rights. Part IV concerns itself with matters of civil responsibilities infringement of rights and their restitution.

In 1910, with the replacement of the monarchy by the Republic in Portugal, substantive changes were introduced in the area of Family Laws. The performance of marriage before the Office of Civil Registration was made compulsory and only those registered in this way were considered valid under the Law. For the first time, provisions were made permitting divorce. These laws were applied uniformly to all sections of society and were in force in Goa in 1961.

In 1962, an enactment of the Indian Parliament, the Goa, Daman and Diu Administration Act, provisionally kept Portuguese civil laws in force in

---

Goa until or unless repealed by the Legislature or another competent authority. Thereafter, with the passing of a number of other Parliamentary Acts pertaining to legislation in areas such as Contracts, Transfer of Property, Easement Rights, Registration and so forth, the corresponding provisions in the Civil Code of Goa have been superseded. Only those provisions in the Civil Code pertaining to Family Laws and Usages have so far survived incursion. These include the laws appropriate to marriage/divorce, succession, guardianship, property, Torts, domicile, possession, access, and waterways, among others. However, these laws have yet to be translated into English, the language of the new generation of lawyers in Goa, and so, increasingly, the number of lawyers and judges conversant with these laws is on the decline, creating a significant impediment in the adequate dispensation of justice. Thus, Goa has had a uniform civil code for the last 500 years.

There are a number of reasons why the Portuguese Civil Code is of paramount significance in the Indian legal context. Firstly, the concept of absolute equality, for the most part, the civil laws currently in force in Goa that pertain to marriage, divorce, protection of children and succession are non-discriminatory in terms of caste, ethnicity or gender. And this is an advantage that does not exist in the rest of India, where the population is governed by Common Law, and in which there exists a lacunae where the protection of the rights of women and children are concerned. Secondly, under Community Property Law, each spouse automatically acquires joint ownership of all assets already in their possession as well as those due to them by inheritance. This is a benefit the majority of Indian women do not have. In addition, by virtue of registration of her marriage, a Goan woman is able to establish her rights from the outset, another advantage that women living under the Common Law system do not possess, since registration of marriage is not mandatory and therefore is difficult to prove, if at any time.
such proof becomes necessary. The main provisions of family laws of Goa are as under:

**Marriage**

Under Portuguese Law, marriage is a contract and the civil registration of marriage is mandatory. There are four different marital options under the law: community property, absolute separation of property, separation of assets existing prior to marriage, and communion of property after marriage, and dotal regime. Whenever no express contract was made, the Law of Community Property was automatically applicable. Therefore, marriages that took place under Community Property Law were considered legal and the other three options were considered conventional. However, since 98 percent of Goan marriages take place under Community Property law, this is the application most relevant to our discussion. In other words, the total number of assets (and liabilities) that a couple brings into a marriage comes under the purview of Community Property. And these assets may not be disposed of or encumbered in any way by one spouse without the express consent of the other. In this way, women are protected under the law by husbands who might otherwise do as they please with the assets. In addition, by virtue of registration of her marriage, a Goan woman is able to establish her rights from the outset. And in the event of legal separation, a woman is entitled to 50 percent of her husband’s income, and not dependent on his charity.

Thus, the uniform civil code insists that all couples must register their intent to marry as well as the marriage itself. The code supersedes religious rules. If a marriage is not registered, the court does not recognize it.
Pre- Nuptial Agreement

In a pre- nuptial agreement, the couple should choose any of the three available systems which deal with property distribution. This contract cannot be changed after the marriage has taken place.

Divorce Laws

The divorce laws in Goa aim to be fair to both parties. Both the families have three of their members to represent them. They play a significant role in granting a separation and maintenance to be allotted to the needy spouse. If the divorce is not mutually sought but contested, the children's custody usually goes to the person who wants to keep the marriage intact and avoid divorce.

Property

If no contract of marriage has been signed, it is custom of the country that governs by default. It is assumed that the couple married under communion of property and each spouse automatically acquires joint ownership of all assets already in their possession as well as those due to them by inheritance.

Properties that belong separately to each of the spouses need to be registered. Otherwise it will be assumed to be community property. All property acquired during the marriage is considered joint property - to be equally divided in case of divorce.

Couples who choose to marry under separate property regime must necessarily reject the communion of property. Each of the property acquired even after marriage can only be registered in the name of one of the spouses. There is no dual ownership.
The third system is dotal regime, which has couples specifying the property included in the endowment. Though these contracts have a lot of flexibility, they must be drawn up before the marriage. Not a single clause can be changed after the wedding.

Under the Civil Laws of Goa, registration of births and deaths are also mandatory. The children of deceased parents fall in the category of what is known as mandatory heirs. They cannot be disinherited whether male or female, save under extraordinary circumstances where the heir has been found guilty of an offense against the parents punishable by more than six months imprisonment, or has taken judicial action against the parent(s), or has refused to take care of the parent(s) prior to their demise. If the deceased parent(s) leave(s) no will, all mandatory heirs are entitled to an equal share of the estate of the deceased. If, on the other hand, the deceased has made a will, he/she may only dispose of 50 percent of the estate in the manner of his/her choosing. This is known as the *quota disponível*. The remaining 50 percent must be divided equally among all mandatory heirs. Such a provision ensures the just distribution of assets among all children, whether male or female. In fact, the only way a woman living under the Civil Law system can be deprived of her legitimate inheritance is by her own express renunciation. The possibility of parents coercing their daughters to renounce their share is reduced by a provision which says that such a renunciation is only valid if done subsequent to the death of the parents. Moreover, in the event of divorce, the legitimate share of the wife, who in a majority of cases is not the major breadwinner, is not contingent upon the munificence of her ex-husband under Community Property Law, she is automatically entitled to half of all assets.

The egalitarian nature of the Portuguese Civil Laws has been lauded by women’s groups throughout India, and is seen as a starting point for legislative reforms regarding women’s’ rights in the rest of the country.
These family laws in Goa aim to protect both the parties. But like any other law, ignorance of these laws renders them less effective. Women should be made aware of these laws and their rights to prefer separate property regimes. These laws apply equally to every one in Goa. Personal law plays no role here. Goan laws are an example of how uniform civil codes treat every member of the society impartially.