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## THE GOA CIVIL CODE

# WHY THE LAW PROTECTS WOMEN

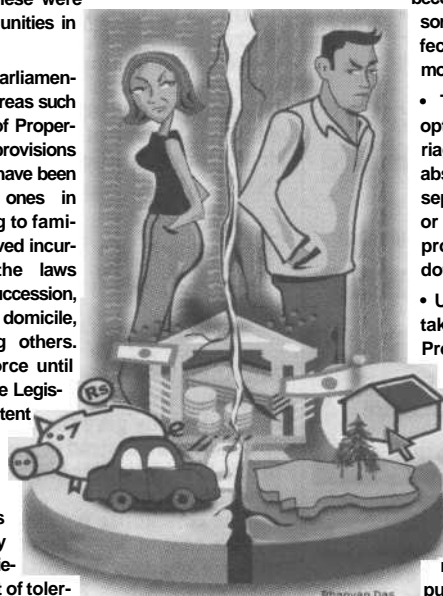
- The Goa Civil Code, collectively called Family Laws, was framed and enforced by the Portuguese rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian government scrapped all the colonial laws and enacted the Goa, Daman and Diu Administration Act to extend central laws to the territory. However, it provisionally kept the Portuguese civil laws in force as these were acceptable by all communities in the state.

- With the passing of Parliamentary Acts pertaining to areas such as Contracts, Transfer of Property, etc, corresponding provisions in the Civil Code of Goa have been superseded. But the ones in the Civil Code pertaining to family laws have so far survived incursion. These include the laws on marriage/divorce, succession, guardianship, property, domicile, and waterways among others. These will remain in force until or unless repealed by the Legislature or another competent authority.

- Expert say the underlying principle of the Portuguese Civil Code is to strengthen the family as the backbone of society by inculcating a spirit of tolerance between husband and wife and providing for in-built safeguards against injustice by one spouse against the other. Its most significant provision in the Indian legal context is the pre-nuptial Public Deed regarding the disposal of immovable and movable property in the event of divorce or death. During matrimony, both parents have a common right over

the estate, but on dissolution, the property has to be divided equally.

- Some features of the Goan marriage law are thus considered more progressive than the Hindu Marriage Act and the Hindu Succession Act. Former Chief Justice of India, Y.V Chandrachud, had observed: "It is heartening that the dream of a uniform civil code in the country finds its realisation in the Union Territory of Goa, Daman and Diu. In



my view it would be a retrograde step if Goa too were to give up the uniformity in its personal laws which it now possesses."

- For the most part, civil laws currently in force in Goa for 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. Under Portuguese Law, marriage is a contract and the civil registration of marriage is mandatory. By virtue of mandatory registration, a Goan woman is able to establish her rights from the outset, an advantage which women in other states do not possess — since registration of marriage elsewhere is not mandatory, it can be difficult to prove, if at any time such proof becomes necessary. Also, compulsory registration of marriage effectively checks child and bigamous marriage.

- There are different marital options under the Goan marriage law—community property, absolute separation of property, separation of assets existing prior to marriage, communion of property after marriage, and dotal regime.

- Up to 98% of Goan marriages take place under Community Property law. Under this provision, each spouse automatically acquires joint ownership of all assets already in their possession as well as those due to them by inheritance. In other words, the total assets (and liabilities) that a couple brings into a marriage come under the purview of Community Property.

And these assets cannot be disposed of or encumbered in any way by one spouse without the consent of the other. In this way, women are protected under the law by husbands who might otherwise do as they please with their assets. In the event of legal separation, a woman is thus entitled to 50% of her husband's income, and not dependent on his charity.