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BEYOND THE UNIFORM CIVIL CODE DEBATE: Critiquing Goa's Succession Law

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BEYOND THE UNIFORM CIVIL CODE DEBATE: Critiquing Goa's Succession Law

Shukr Usgaonkar*

[Abstract: *Edmund Burke is known to have once said, "The power of perpetuating our property in our families is one of the most valuable and interesting circumstances belonging to it."[1] Against this backdrop, the author undertakes a comparative analysis of the salient features of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012[2] including those dealing with its scope, extent, and applicability, execution of wills, devolution of estate, proceedings for division of assets of the deceased, and the drawing up of deeds of renunciation of inheritance and qualification of heirs, vis-à-vis the corresponding provisions in the personal laws prevailing in the rest of India. Upon highlighting the lacunae in the Act and suggesting measures for remedying the shortcomings, the author argues that the procedure envisaged in the Act for enforcing rights pertaining to inheritance in Goa is not significantly advantageous in comparison to the statutes governing heirship in other Indian states and that reforming the existing succession law framework, whether in Goa or elsewhere, in terms of the manner in which it is administered and the machinery responsible for its implementation will be more helpful to the common man than grand conceptions of a Uniform Civil Code modelled on the lines of the Portuguese Civil Code, 1867,[3] which serves as the bedrock of Goa's family law regime.*]

Keywords: *Inheritance, Goa, Portuguese Civil Code, Inventory Proceedings, Wills, Special Notaries.*

I

Introduction

A reference to the family law system of Goa usually evokes the idea of a Uniform Civil Code, steeped in secular ideals and halcyon liberalism, which applies equally to all communities and strata of society regardless of religious beliefs, in juxtaposition to the personal law regime prevailing in the rest of India where the

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1 Marvin Sussman *et. al.*, THE FAMILY AND INHERITANCE 4 (1970)

2 The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012.

3 The Portuguese Civil Code, 1867.

law governing an individual in matters such as marriage, divorce, adoption, and succession is predicated on one's faith.[4]

Contrary to popular perception, the civil law framework pertaining to familial matters in Goa consists of not merely the Portuguese Civil Code, 1867,[5] which is believed to embody the mandate of Article 44[6] of the Constitution of India,[7] but rather a bouquet of subsequently enacted legislations, such as Decree No. 1 of December 25, 1910 known as 'Law of Marriage as a Civil Contract',[8] Decree of May 26, 1911 known as 'Law of Divorce',[9] and Decree No.2 dated December 25, 1910 known as 'Law of Protection of Children',[10] some of which have repealed the corresponding provisions of the Civil Code.[11] Pertinently, certain colonial laws governing civil rights are applicable exclusively to a particular religious community such as Decree No. 35461 dated January 22, 1946[12] which provides a procedural link between Civil Marriage and the celebration of a Church Marriage, also known as Canonical Marriage or 'Concordat' marriage in the case of Catholics;[13] and the Decree dated December 16, 1880[14] which guarantees gentile Hindus the right of adoption.[15] Going by William D. Hackland's understanding of a 'Code' as a 'pre-emptive, systematic, and comprehensive enactment of a whole field of law which displaces all other law in its subject',[16] using the phrase 'Uniform Civil Code' to describe Goa's civil law system is reminiscent of Voltaire's remark about the Holy Roman Empire being neither holy, nor Roman, nor an empire,[17] given that there is no single, self-contained statute applicable in its entirety, uniformly across religious

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4 *See* Justice Mahesh S. Sonak, *Foreword* in F. E. Noronha, THE PORTUGUESE CIVIL CODE, 1867, THE GOA SUCCESSION, SPECIAL NOTARIES AND INVENTORY PROCEEDING ACT, 2012, LAWS OF MARRIAGE, DIVORCE AND CHILDREN IV (2020) (hereafter, 'Noronha'); Ramakant Khalap, *Towards a Uniform Civil Code for India – I,* THE NAVHIND TIMES (Jul. 13, 2023, Goa); Lisa Monteiro, *CJI Bobde hails Goa's Uniform Civil Code,* THE TIMES OF INDIA (Mar. 28, 2021) *available at:* https://timesofindia.indiatimes.com/india/cji-bobde-hails-goas-uniform-civil-code/articleshow/81730205.cms (last visited Sep. 19, 2024).

5 The Portuguese Civil Code, 1867 (hereafter, 'Civil Code').

6 The Constitution of India, art. 44. Pertinently, the Civil Code itself contains provisions dealing exclusively with Catholic marriages. *See id.,* Part II, Book II, Title II, Chapter I, section II, sub-section I (art. 1069 – 1071); art. 1086, art. 2476.

7 The Constitution of India.

8 Law of Marriage as a Civil Contract (Decree No. 1 dated December 25, 1910) [Hereafter, 'Law of Marriage'].

9 Law of Divorce, (Decree of May 26, 1911) [Hereafter, 'Law of Divorce'].

10 Law of Protection of Children (Decree No. 2 of December 25, 1910) [Hereafter, 'Law of Protection of Children'].

11 Law of Marriage, *supra* note 5, art. 72; Law of Divorce, *supra* note 6, art. 70; *id.,* art. 59.

12 Decree No. 35461 dated January 22, 1946.

13 Noronha, *supra* note 1 at 196.

14 Code of Usages and Customs of Gentile Hindus (Decree of December 16, 1880).

15 *Id.*, art. 10 – art. 15.

16 William D. Hawkland, *The Uniform Commercial code and the Civil Codes* 56 LA. L. REV. 231, 235 (1995).

17 James Bryce, THE HOLY ROMAN EMPIRE 214 (1901).

lines in Goa for the protection and enforcement of the whole gamut of a citizen's civil rights.

At the outset, the purpose of this article is not to debate the advantages or disadvantages of having a common Civil Code for India, but instead, to build on P. Chidambaram's argument that it is advisable to reform the existing laws, whether in Goa or elsewhere, rather than engage in a grand legislative project on a national scale.[18] By confining the analysis to Goa's succession laws to the extent that they serve as an interface between the public and the administration in inheritance-related matters, the author asserts that a one-size-fits-all solution in the form of a Uniform Civil Code does not serve as a panacea for the layman seeking concrete relief from the authorities; and that ensuring a simplified, speedy, and accessible procedure for enforcing civil rights and implementing the law is considerably more important than abstract notions of inter-religious and gender-based equality.

II

Who is a "Goan"?

In the year 2016, a major overhaul was sought to made to the law of inheritance in Goa, which hitherto was contained in the Civil Code of 1867.[19] Although passed by the state's legislative assembly in 2012, the much-awaited Goa Succession, Special Notaries and Inventory Proceedings Act, 2012[20] came into force a good four years later[21] and serves as the extant statute in matters of testamentary as well as intestate succession. The Act has been justifiably described as old wine in a new bottle[22] since it has retained virtually the entire body of substantive as well as procedural law which existed in the Civil Code such as the order of succession,[23] inventory

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[18] P. Chidambaram, *Reform (not uniform) personal laws*, THE INDIAN EXPRESS (Jul. 9, 2023) *available at:* https://indianexpress.com/article/opinion/columns/reform-not-uniform-personal-laws-8818777/ (last visited Sep. 19, 2024).

[19] Civil Code, *supra* note 2, Part II, Book III, Title II.

[20] The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (hereafter, 'Succession Act' or 'Goa Succession Act').

[21] The Succession Act was notified on September 22, 2016 by way of Gaz. Not. 7/18/2016-LA (Department of Law & Judiciary, Legal Affairs Division, Government of Goa, Sept. 22, 2016) published in Official Gazette, Extraordinary, Series I No. 25 dated September 22, 2016. Section 1(3) of the Act states that the Succession Act shall come into force on the 90th day from the date of its publication in the Official Gazette. Hence, the Succession Act came into force on December 22, 2016.

[22] Goa State Legal Services Authority, *A Talk on "Succession Law"*, YOUTUBE (Apr. 3, 2021) *available at:* www.youtube.com/watch?v=8WEN_tfJGNo (last visited Sep. 19, 2024).

[23] Succession Act, *supra* note 17, sec. 52; Civil Code, *supra* note 2, art. 1969.

proceedings,[24] registration of wills before the Special Notary,[25] the concept of legitime or inalienable share in the estate of the individual which must be mandatorily preserved for his heirs;[26] and can be seen as one among the many token attempts at discarding colonial baggage by rearranging statutory provisions under a rechristened legislation in the name of reform without implementing any concrete changes.[27]

The first, but arguably the most convoluted problem encountered while effectively enforcing the Act involves determining its applicability. For understanding purposes, the question can be bifurcated into the pre-liberation and post-liberation era of Goa. Let us start our discussion with the pre-liberation era. Section 1(4)[28] of the Succession Act deals with the scope of the Act, and shorn of the verbiage, states that those who were governed by the Civil Code before December 20, 1961 shall be governed by the Succession Act.[29] This necessitates an examination of Article 18[30] of the Portuguese Civil Code since Article 17[31] confines the applicability of the Code to Portuguese citizens only.

It has been suggested by some jurists[32] that the meaning of the term "Portuguese Citizen" as used in the context of a person to whom the Portuguese Civil Code applies can be understood by referring to the Goa, Daman and Diu (Citizenship) Order, 1962[33] which was passed by the Central Government to confer Indian citizenship on persons who were born or whose parents or grandparents were born before December 20, 1961 in the territory of Goa, Daman and Diu. It is the author's respectful submission that such an interpretation is erroneous for the simple reason that the Order does not deal with Portuguese Citizenship at all. Indeed, the words "Portuguese Citizen" do not figure even once in the Order since it merely vests Indian citizenship on certain individuals who may or may not be Portuguese citizens. Moreover, the interpretation ignores the settled canon of statutory interpretation that when a term is specifically defined in a statute, then for purposes

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24 Succession Act, *supra* note 17, Part IV; Civil Code, *supra* note 2, Part II, Book III, Title II, Chapter IV, Section III.

25 Succession Act, *supra* note 17, Chapters XII – XIII and XXI – XXV; Civil Code, s*upra* note 2, Part II, Book III, Title II, Chapter II, Sections I, II, VII, VIII.

26 Succession Act, *supra* note 17, Chapter X; Civil Code, *supra* note 2, Part II, Book III, Title II, Chapter II, Section III.

27 *See generally* Arvind Datar, *A question of propriety*, INDIA TODAY (Sep. 25, 2023) 36; Abhishek Singhvi, *New criminal codes, the same problems*, THE INDIAN EXPRESS (Jul. 17, 2024) *available at:* https://indianexpress.com/article/opinion/columns/new-criminal-codes-9457771/ (last visited Sep.19, 2024).

28 Succession Act, s*upra* note 17, sec. 1(4).

29 Succession Act, s*upra* note 17, sec. 1(4)(a).

30 Civil Code, *supra* note 2, art. 18.

31 Civil Code, *supra* note 2, art. 17.

32 Noronha, *supra* note 1 at 5.

33 The Goa, Daman and Diu (Citizenship) Order, 1962.

of that statute, that term cannot bear a meaning assigned to it in another statute.[34] As Odgers succinctly puts it, "It is wrong to start with some a priori idea of that meaning or intention and to try by construction to work that idea into the words of the statute in question."[35]

Thus, the question, "Who is a Portuguese Citizen?" will have to be answered by referring to the provisions of the Civil Code itself. Article 18(1)[36] of the Civil Code states that a Portuguese citizen is one "who is born in Portuguese territory, of Portuguese father, or of Portuguese mother being illegitimate issues." Note that there is a comma after the phrase "born in Portuguese territory" in the text of the provision. This is an instance of poor draftsmanship and on a plain reading of the provision, the vagueness created by failing to differentiate between citizenship by birth and by parentage becomes evident: Is it the case that a person must be born in Portuguese territory and to a Portuguese or a Portuguese mother? In other words, should both the twin conditions of *jus soli* (citizenship by birth) and *jus sanguinis* (citizenship by parentage)[37] be satisfied? Alternatively, does a person acquire rights and is subject to the liabilities as provided by the Civil Code if he is born in Portuguese soil regardless of the citizenship of his parents; or if his parents are Portuguese citizens even if he is born in foreign territory?

According to the first interpretation which reads the two requirements conjunctively, it is absolutely necessary that you must be born in Portuguese territory. Additionally, your father must be a Portuguese citizen – your mother may or may not be Portuguese. It is submitted that the mother's nationality is irrelevant in case of legitimate children since as per Article 18(6)[38] of the Civil Code, a foreign woman married to a Portuguese man automatically becomes a Portuguese citizen. Thus, if the father is Portuguese, the child, whether legitimate or illegitimate, is a Portuguese citizen. On the other hand, if the father is not Portuguese, an illegitimate child will become a Portuguese citizen only if his mother is Portuguese. The following diagram will clarify the scope of the provision when examined from the prism of this interpretation:

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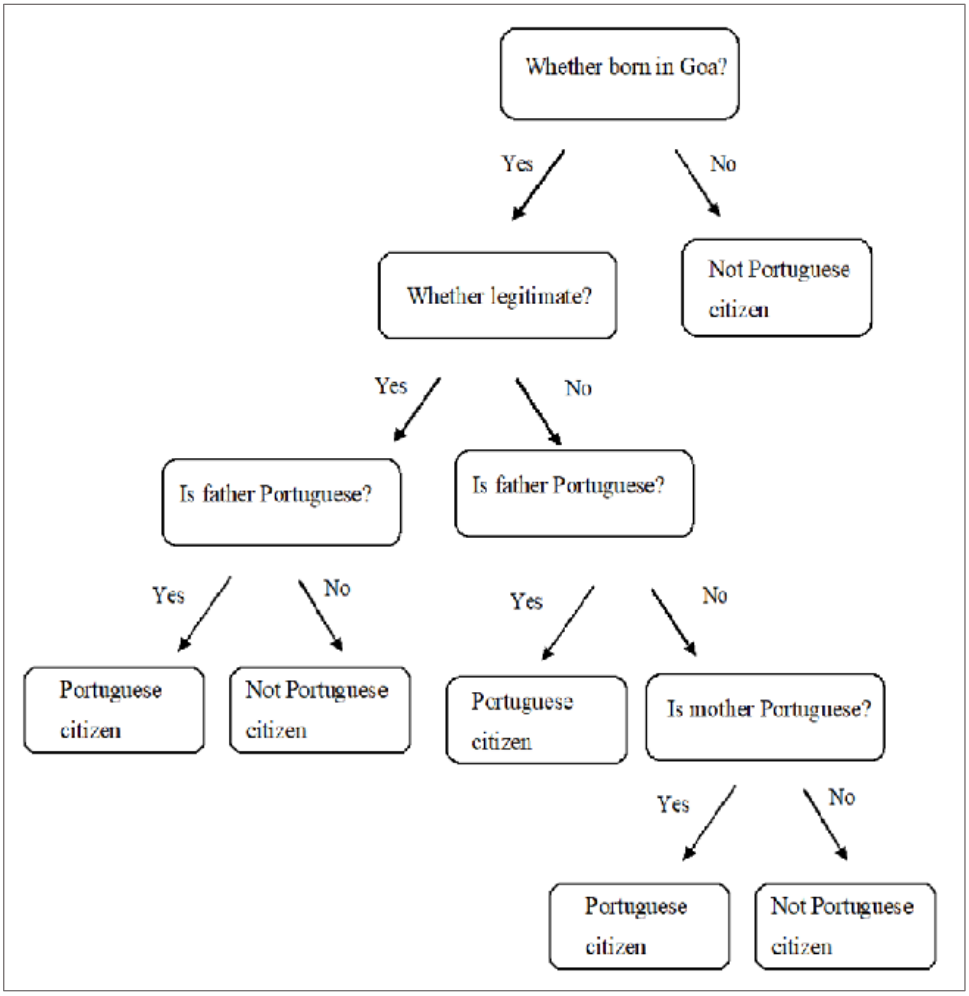
[34] *Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd* v. *Maharashtra State Co-operative Bank Ltd,* (2003) 11 S.C.C. 66, para 17.

[35] Gerald Dworkin, ODGERS' CONSTRUCTION OF DEEDS AND STATUTES 237 (1996).

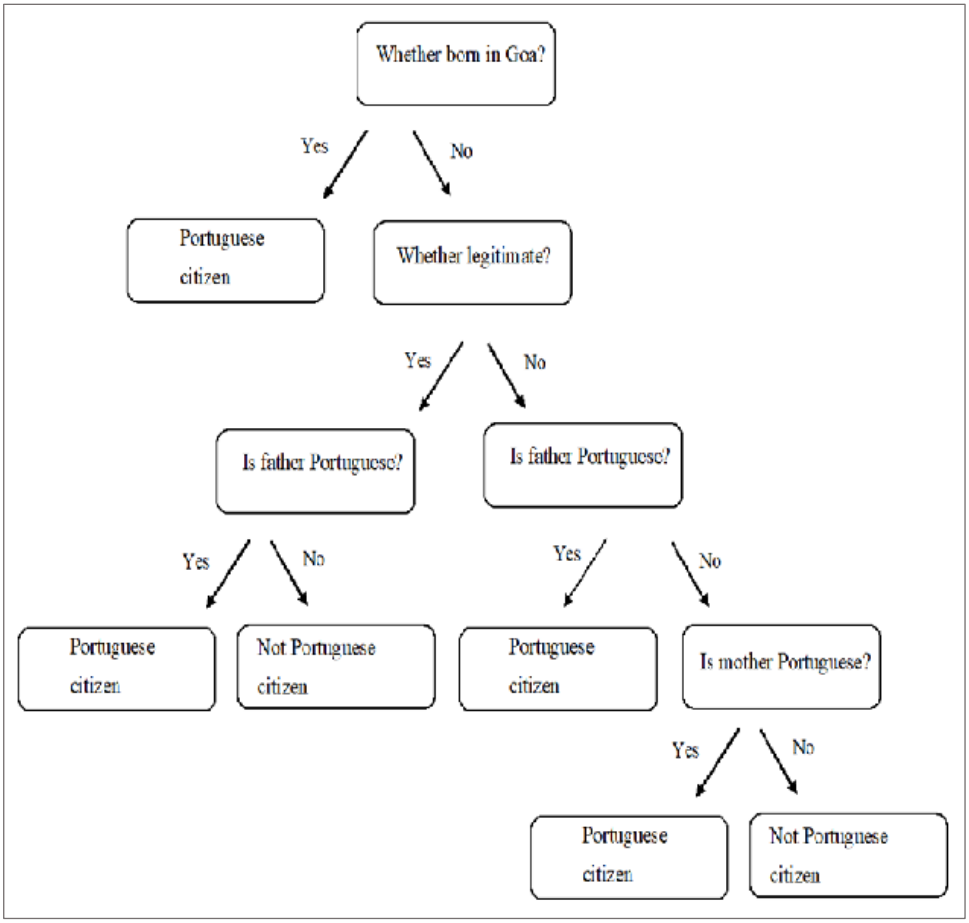
[36] Civil Code, *supra* note 2, art. 18(1).

[37] *See generally* Eftihia Voutira, *Jus Sanguinis and Jus Soli: Aspects of Ethnic Migration and Immigration Policies in EU States* in AN INTRODUCTION TO INTERNATIONAL MIGRATION STUDIES: EUROPEAN PERSPECTIVES 129 (Marco Martiniello & Jan Rath, eds. 2012); *Expatriating the Dual National,* 68(6) YALE L.J. 1167, 1167 (May 1959).

[38] Civil Code, *supra* note 2, art. 18(6).



An alternative interpretation of Article 18(1) would require that the comma after the phrase, "born in Portuguese territory", be read as "or" instead of "and". In short, if you are born in Portuguese territory, you automatically become a Portuguese citizen and no further investigation is necessary. It is only if you are born outside Goa does it becomes necessary to examine the parentage and legitimacy of the individual in question, whereafter the inquiry as delineated in the first interpretation must be conducted. The following diagram illustrates the procedure to be followed:



It is submitted that the second interpretation, apart from being the view favoured by the Bombay High Court in *Eugenia Rana v. Hirabai Hiralal Rana*,[39] must be adopted for the following two reasons. Firstly, it enlarges the scope of the Act. According to the first interpretation, if you are not born in Portuguese territory, this by itself is sufficient to disentitle you from Portuguese citizenship. Even if you are born in Portuguese territory, the inquiry continues recursively through the male ancestors. To put it in simple terms, to establish that a child is Portuguese, it will have to be proved that his father is Portuguese, which can only be done if his paternal grandfather is Portuguese, and so on until the loop is broken by Article 18(4)[40] of the Civil Code which states that a person born in Portuguese territory of unknown parents or of unknown nationality is a Portuguese citizen. As per the second interpretation, birth in Goa, whether of the person in question or any of his male forefathers, is in itself proof of Portuguese origin, in consonance with the

[39] *Eugenia Rana* v. *Hirabai Hiralal Rana,* Appeal from Order No. 194 of 2014, Decided on July 25, 2006 (Bombay High Court) para 7.

[40] Civil Code, *supra* note 2, art. 18(4).

presumption against non-citizenship raised by international law according to which birth, descent, or residence can each be presumed to support a genuine, effective, and substantial link between the individual and the State.[41]

At this juncture, two notes of caution need to be sounded. Article 18(1), even when liberally construed, places considerable emphasis on the place of birth, and even with the gradual onset of digitisation, obtaining Portuguese era records such as *teor*, (the transcription of the original record on the book)[42] pertaining to *registo de nascimento* (birth registration),[43] *registo de casamento* (marriage registration),[44] *habilitação de herdeiros* (entitlement of heirs)[45] which are necessary to establish ancestral linkages, is a notoriously difficult exercise due to the deleterious effect of natural calamities, departmental neglect, and the general passage of time,[46] more so for the marginalized sections of society who usually do not have the requisite paperwork to conclusively establish their lineage.[47] In such circumstances, it is the author's submission that strict documentary evidence of nativity for the purpose of proving whether an individual is governed by the Civil Code should not ordinarily be insisted. Even in cases which are contested or if there are grounds to doubt the bona fides of the person who seeks to be brought within the purview of the Code, once a prima facie case is made out by way of production of a school leaving certificate, proof of long residence, or other material which, though may not conclusively prove the factum of birth in colonial Goa, but which is sufficient to raise a reasonable inference of the individual in question having roots in the state, by applying the principle laid down by the African Court of Human and People's

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41 Carol A. Batchelor, *Statelessness and the Problem of Resolving Nationality Status*, 10 1/2 IJRL 156, 161 (1998); Gautam Bhatia, *Proving Citizenship: Lessons from the African Court on Human and Peoples' Rights,* INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Feb. 25, 2020) *available at:* https://indconlawphil.wordpress.com/2020/02/25/proving-citizenship-lessons-from-the-african-court-on-human-and-peoples-rights/ (last visited Sep. 19, 2024); *Robert John Penessis* v. *United Republic of Tanzania*, Application No. 013/2015, Decided on November 28, 2019 (African Court on Human and People's Rights) para. 99 (hereafter, 'Penessis').

42 Neshwin Almeida, *Margao Civil Registrar office: Corruption allegations and inefficiency go hand in hand,* HERALD (Jan. 22, 2016) *available at:* www.heraldgoa.in/Goa/Citizen-Herald/Margao-Civil-Registrar-office-Corruption-allegations-and-inefficiency-go-hand-in-hand/98087 (last visited Sep. 19, 2024) [Hereafter, 'Neshwin'].

43 DICIONARIO UNIVERSAL DE INGLES 463, 549 (Sofia Leitao, ed. 1998).

44 *Id.*, at 146, 549.

45 Vanessa S. Oliveira, *The Gendered Dimension of Trade: Female Traders in Nineteenth Century Luanda* 23(2) PSR 93, 102 (2015).

46 Vibha Verma, *Portuguese-era records, manuscripts face threat*, HERALD (Aug. 27, 2013) *available at:* www.heraldgoa.in/Goa/The-Sunday-Roundtable/portugueseera-records-manuscripts-face-threat/68842 (last visited Sep. 19, 2024); Nissar Dias, *Salcete birth records for 1965-1969 destroyed: Govt*, THE TIMES OF INDIA, (Apr. 16, 2018), *available at:* https://timesofindia.indiatimes.com/city/goa/salcete-birth-records-for-1965-1969-destroyed-govt/articleshow/63776273.cms (last visited Sep. 19, 2024); Newton Sequeira, *Governments begins digitisation of old and fragile records in Goa*, THE TIMES OF INDIA, (Dec. 27, 2022, Goa) 1.

47 N. Ram, *The Evolving Politics of Citizenship in Republican India,* in ON CITIZENSHIP 26 – 27 (2021).

Rights in *Ochieng v Tanzania*[48] and *Penessis v Tanzania*,[49] the burden would shift on the party disputing the claim to lead evidence to the contrary, failing which the authority or court in question must hold that Article 18 of the Code is applicable and that the person in question is a Portuguese citizen.

The second concern revolves around the constitutional validity of Article 18 of the Civil Code, and consequently section 1(4) of the Succession Act. It is must be noted that place of birth remains the fulcrum on which hinges the applicability of the rights and liabilities guaranteed therein, and Article 15(1)[50] of the Constitution of India prohibits discrimination on such grounds. Although the purpose of this article is not to examine this issue in depth, but given that the state's law ministry itself had objected to the tabling of a private member's Bill in the legislative assembly which sought to selectively confer benefits on individuals who are governed by the Succession Act on the ground that it is discriminatory,[51] it is submitted that the very foundation on which Goa's succession law stands is constitutionally suspect.

As stated, the entire discussion thus far has been confined to individuals born prior to December 20, 1961. Birth in pre-liberation Goa, Daman and Diu establishes that an individual is governed by the Civil Code and therefrom, by a cascading effect, all of his descendants are brought within the purview of the Civil Code, and resultantly, also fall within the ambit of the Succession Act, provided they are born in Goa, as per section 1(4)(b).

To give an example, let us say that 'A' was born in Portuguese Goa prior to December 20, 1961. Since he is a Portuguese Citizen for the purpose of Article 18 by virtue of his birth in pre-liberation Goa, he is governed by the Civil Code. Accordingly, his son, 'B', who is born after December 20, 1961 in Goa will be a Portuguese citizen too, and hence governed by the Civil Code, since his father is a Portuguese citizen, and because he was born in Goa. B' son, 'C' who is born outside Goa will also be a Portuguese citizen and consequently, entitled to the rights and subject to the liabilities in the Civil Code since his father is a Portuguese citizen, although the fact that his birth occurred outside Goa would have otherwise disentitled him from Portuguese citizenship and kept him beyond the scope of the Civil Code.

Likewise, as far as the Succession Act is concerned, 'A' is governed by the Succession Act as per section 1(4)(a) of the Act, since he was governed by the Civil Code prior to December 20, 1961. 'B' will also be within the scope of the Succession Act since his father is governed by the Civil Code although his birth took place in Goa after

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[48] *Ochieng* v. *Tanzania*, Application No 012/2015, Decided on March 22, 2018 (African Court of Human and Peoples' Rights) para. 80.

[49] Penessis, *supra* note 38, paras. 90 – 99.

[50] The Constitution of India, art. 15.

[51] *POGO Bill not tabled as it's unconstitutional: CM*, THE TIMES OF INDIA (Jul. 23, 2022, Goa) 1.

Portuguese rule ended. However, unlike 'B', 'C' cannot take the benefit of section 1(4)(b) though his father is governed by the Civil Code since birth in Goa is a pre-condition which 'C' does not satisfy.

A question might arise: after the conquest of the overseas Portuguese territory of Goa, Daman and Diu by the armed forces of the Republic of India,[52] would it still be appropriate to apply the provisions of Article 17 and Article 18 given that they use the term, "Portuguese citizens" and "Portuguese territory"? Take the case of a person, 'A' who was born after December 19, 1961. His parents may have been born in Portuguese territory and may have been Portuguese citizens but he was born in Indian soil. Can he still be called a Portuguese citizen for the purpose of the Civil Code, given that the Indian Constitution does not recognize dual citizenship?[53] Likewise, is the use of the term, "Portuguese territory" in Article 18 of the Civil Code apposite since Goa is now a part of the Indian Union though the Civil Code is still in force?[54]

The only measure adopted thus far to remedy this aberration is the Order of the Military Governor of Goa, Daman and Diu dated May 31, 1962 which came into effect retrospectively from December 20, 1961[55] and states that any law in force in Goa, Daman and Diu bearing the words "Portugal" and "Portuguese" shall be substituted by the words "India" and "Indian". However, the result is far from satisfactory since it leads to a duality of modes of acquisition of Indian citizenship, namely, the Citizenship Act, 1955[56] and Title II of Part I of the Civil Code[57] which will now read as "As to how the status of Indian Citizen is acquired". Besides, Article 18(1) will now refer to birth in "Indian territory", to an "Indian father", and to an "Indian mother" being an illegitimate issue, as conditions for acquiring "Indian citizenship". Likewise, only "Indian citizens" would enjoy all the rights which the Code recognizes as per Article 17, which would result in an absurd situation whereby a person born and residing in any part of India would be governed by the Civil Code and the Succession Act.

Even if the Military Governor's Order were not to be issued, an anomaly is created by section 1(4)(a) of the Succession Act due to the continued used of the term "Portuguese territory" in Article 18(1), which unfortunately has not been defined by the Civil Code. Does it also refer to the entire Portuguese empire which includes the

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52 Aureliano Fernandes, CABINET GOVERNMENT IN GOA, 1961-1993: A CHRONICLED ANALYSIS OF 30 YEARS OF GOVERNMENT AND POLITICS IN GOA 1 – 2 (1997).

53 The Constitution of India, art. 9; *Izhar Ahmad Khan* v. *Union of India*, A.I.R. 1962 S.C. 1052, paras. 12, 39; *Ram Jethmalani* v. *Union of India*, (1984) 3 S.C.C. 696, para 4.

54 *See* The Goa, Daman and Diu (Administration) Act, 1962, sec. 5(1).

55 Order No. 175/2/MG (Military Government of Goa, Daman and Diu, May 31, 1962). This Order was published in Government Gazette, Diu, Series I No. 22 (Government of Goa, Daman and Diu, June 7, 1962).

56 The Citizenship Act, 1955.

57 Civil Code, *supra* note 2, Part I, Sole Book, Title II.

principal territory in Europe and all of its former colonies, the occupations in the Indian subcontinent being one of many? After all, the Civil Code came into force first in the Continental territory of the Portuguese kingdom on March 22, 1868[58] and was subsequently extended to the overseas provinces on November 18, 1869.[59] As a result, Article 18(1) of the Civil Code would confer Portuguese citizenship on individuals born in any corner of the Portuguese empire who would be governed by the Civil Code and not just those in Goa, Daman and Diu. A textual interpretation of Section 1(4)(a) and Section 1(4)(b) of the Succession Act would bring all such individuals and their lineage within the purview of the Succession Act.

The author submits that the terms "Portuguese territory" and "Portuguese citizens" in Article 18(1) must be read down to refer only to the Portuguese enclaves in India. This is because as held by the Supreme Court in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*,[60] the Portuguese Civil Code, though enacted by a foreign legislature, is a part of Indian law.[61] If that is so, then on account of the presumption against extra-territorial operation of legislation[62] coupled with the principle of internal sovereignty of all nations,[63] and the long-established rule of international law which seeks to avoid dual nationality to the possible extent,[64] it is necessary to limit the operation of Article 18(1) strictly to Indian territory. As Richard Flournoy notes:

> *It is obvious that international law does place a limit upon the power of a state to make effective claims upon the nationality of persons. While it may be competent for a state to confer rights of citizenship within its territories upon whomsoever it pleases, regardless of place of birth, parentage or residence, it is quite a different matter for it to stretch its hands into the recognized domain of other states and*

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58 Charter of Law of July 1, 1867, art. 2

59 Charter of Law of July 1, 1867, art. 9; Law dated November 18, 1869 extending the Civil Code to the Overseas Provinces.

60 *Jose Paulo Coutinho* v. *Maria Luiza Valentina Pereira* (2019) 20 S.C.C. 85 [Hereafter, 'Jose']

61 *Id.,* paras. 16, 22, 30. *See also Justiniano Augusto De Piedade Barreto* v. *Antonio Vicente Da Fonseca* (1979) 3 S.C.C. 47, para 11.

62 John H. Knox, *A Presumption against Extrajurisdictionality*, 104 (3) AJIL 351, 351 (2010); *Nautam Prakash DGSVC* v. *K.K.Thakkar*, (2006) 5 S.C.C. 330, para. 24; *Seymour* v. *The Queen (Bermuda)*, [2008] 1 A.C. 713 (P.C.) (Appeal taken from the Court of Appeal of Bermuda) para. 14.

63 Dr. Dharmendra Kumar Singh, *Constitutional Space and Legislative Development in India on Extra-Territorial Operation of Law*, ILILR 42, 43 – 44 (Summer Issue 2018); Willis L. M. Reese and Henry Harfield, *Extraterritorial Application of Law—General Principles*, 64 (4) AJIL 130, 131 – 132, 134 (1970); Lars Bangert Struwe *et. al.*, TO BE, OR NOT TO BE SMART DEFENCE, SOVEREIGNTY AND DANISH DEFENCE POLICY 9 – 10 (2012).

64 Walter Arevalo-Ramirez & Robert Joseph Blaise Maclean, *Dual Nationality and International Law in times of Globalization. Challenges and Opportunities for Consular Assistance and Diplomatic Protection in recent cases* 17(2) Braz. J. Int. Law 287, 294 (2020); *See* Roberto Cordova, (Special Rapporteur) *Report on Multiple Nationality* U. N. Doc A/CN.4/83 II (April 22, 1954) 42 – 52.

> *claim as its nationals persons having no connection with it of a kind generally recognized as furnishing a sufficient ground for the conferring of nationality.*[65]

Insofar as sections 1(4)(a) of the Succession Act are concerned, it is necessary to omit persons born in Portuguese Indian territories other than Goa, such as Daman and Diu, and Dadra and Nagar Haveli[66] from its scope. Unlike the Parliament of India which can legislate extra-territorially notwithstanding that the said laws may be unenforceable, states do not have such powers unless there is sufficient territorial nexus between the subject matter and the concerned state.[67] From the viewpoint of conventional jurisprudence, it is highly doubtful whether such nexus exists in inheritance related matters. As Herbert Goodrich comments:

> *There is great difficulty in seeing how the law of Michigan, in the hypothetical case stated at the beginning of this discussion, can project into Ohio and control the disposition of property there. There is no reason why Ohio should allow the Michigan law governing the distribution of a decedent's estate to displace its own legislative enactments on the subject.*[68]

A simpler solution to the predicament would be to repeal Title II of Part I as well as Articles 17 and 18 of the Civil Code and substitute them with a single provision clarifying the categories of persons to whom the Civil Code applies without making any reference to citizenship, whether Indian or Portuguese. Alternatively, as held in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*,[69] the term "citizenship" should be read down to mean domicile, although it would be further necessary to prescribe the duration of permanent residence and the modalities of proving it in case the same is disputed.

On the other hand, the Act carves out an exception for individuals whose birthplace and place of origin do not coincide. Those born outside Goa whose parents are or were governed by the Civil Code are permitted to make a declaration that they desire not to be governed by the provisions of the Succession Act, within three years of attaining majority before the Special Notary,[70] an authority created under the Succession Act[71] and altogether unconnected with those who are clothed with powers under the Notaries Act, 1952.[72] On doing so, such person's rights in matters pertaining to succession shall cease to be regulated by the Succession Act. Likewise,

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65 Richard W. Flournoy, Jr., *Nationality Convention, Protocols and Recommendations Adopted by the First Conference on the Codification of International Law*, 24(3) AJIL 467, 469 (1930)

66 BRITANNICA, *Portuguese India*, *available at:* https://www.britannica.com/place/Portuguese-India (last visited January 4, 2025)

67 *Jersey Fishermen's Association Ltd & Ors* v. *States of Guernsey*, 2007 U.K.P.C. 30 (P.C.) (Appeal taken from Guernsey) para 33; *The State vs Narayandas Mangilal Dayame*, A.I.R. 1958 Bom 68, para 4 [Hereafter, 'Dayame']; H. M. Seervai, CONSTITUTIONAL LAW OF INDIA : A CRITICAL COMMENTARY VOL. III 2305 (1996).

68 Herbert F. Goodrich, *Inheritance Problems in the Conflict of Laws* 24(6) MICH. L. REV. 558, 561 (1926).

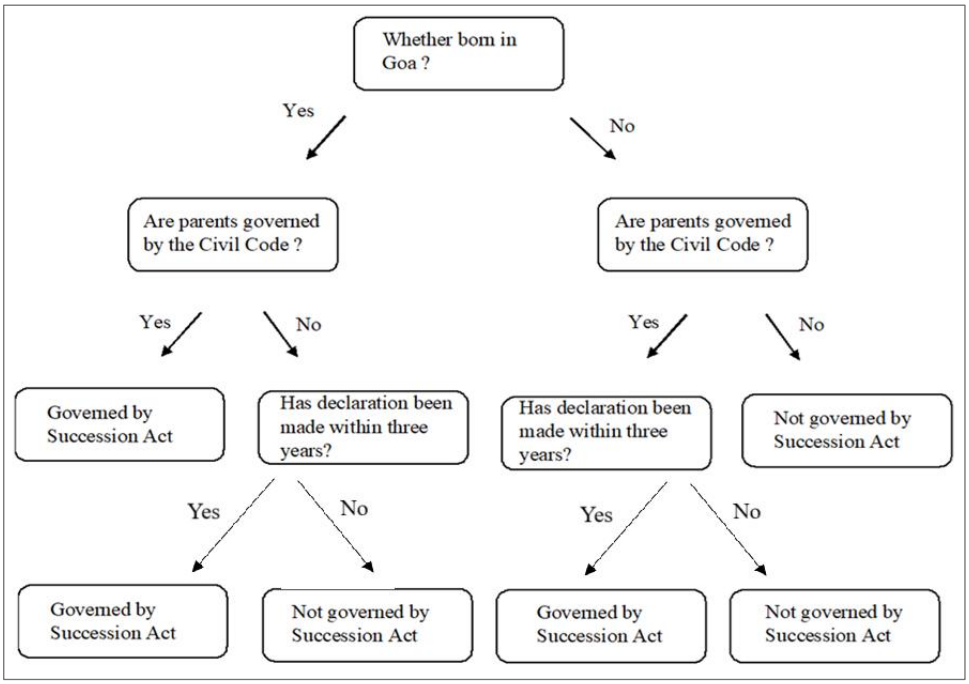
69 Jose, *supra* note 57, para 22, 27, 30.

70 Succession Act, *supra* note 17, sec. (1)(4)(c).

71 Succession Act, *supra* note 17, sec. 2(y), sec. 297.

72 The Notaries act, 1952.

those who are born within the borders of the state and have chosen Goa as their state of permanent residence but whose parents are not governed by the Succession Act are entitled to make a declaration that they desire to be governed by the Succession Act within three years of attaining majority, and the result of making such declaration is that they are brought into the fold of the Act, notwithstanding their non-Goan roots.[73]



To conclude, the following flowchart graphically summarizes the procedure to determine whether an individual born in the post-liberation era is governed by the Succession Act:

III

Acceptance and Renunciation of Inheritance: A Jurisprudential Muddle

Further complications come to the fore in the second chapter of the Succession Act. For example, Section 13[74] of the Succession Act states that inheritance is transmitted to the heirs the moment the estate leaver dies, whether or not the deceased has made

[73] Succession Act, *supra* note 17, sec. (1)(4)(d).
[74] Succession Act, *supra* note 17, sec. 13.

a will. In short, it seems that no overt act is necessary on the part of the beneficiaries of the succession since it vests in them automatically on the death of the estate leaver.

The anomalies in the Succession Act become evident in Chapter IV[75] which contains provisions pertaining to acceptance and renunciation of inheritance. At this point, a discerning person might ask: if section 13 states that an heir has already received his share of the inheritance the moment the estate leaver expired, where is the question of any acceptance of inheritance? The incorporation of provisions relating to relinquishment of inheritance are understandable – for example, if a person's estate is encumbered with debts or beleaguered by litigation, he may want to renounce any share therein so that he is not saddled with the same liabilities, and the Succession Act does allow the heir to foresake his inheritance by executing a relinquishment deed under section 30[76] read with section 35[77] of the Act. However, the co-existence of the provisions for automatic transmission as well as those dealing with acceptance of inheritance is puzzling.

Jurisprudentially, as explained by the Supreme Court of Puerto Rico in *Constancia v. Juan*,[78] there are two diametrically opposite systems in matters of acquisition of inheritance. Under the German system, inheritance is automatically acquired on the decedent's death.[79] This is also the position in Hindu Law where upon the death of a Hindu, the person who is then his nearest heir becomes entitled to the property left by him immediately and as Sir Dinshah Mulla puts it, "the right of succession vests him in at once and cannot in any circumstance remain in abeyance."[80] There is no need for any express or tacit act of acceptance of inheritance. On the other hand, under Roman law, the death of the deceased opens the succession but it does not by itself turn another person into an heir. Alessando Buono associates the interregnum between death and the vesting of the deceased's estate in his heirs with the Roman doctrine of *persona ficta* wherein the inheritance lying unaccepted is equated to a "fictitious person" representing the image of the dead, until a "real" person or the deceased's heir accepts it.[81] Others have theorised that the intestate death of a person under the Roman system is followed by three more stages – the call to the inheritance, the offer of the inheritance, and the acquisition. Thus, death can be seen as a correlative of an offer of a contract, the acceptance of which constitutes a person

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75 Succession Act, *supra* note 17, Chapter IV.

76 Succession Act, *supra* note 17, sec. 30.

77 Succession Act, *supra* note 17, sec. 35.

78 *Constancia* v. *Juan*, 1986 PR Sup LEXIS 140 (hereafter, 'Constancia').

79 *Id.*, at pg. 3. *Cf.* George A. Pelletier Jr. & Michael R. Sonnenreich, *A Comparative Analysis of Civil Law Succession* 11 VILL. L. R. 323, 329 (1966).

80 Dinshah Fardunji Mulla, PRINCIPLES OF HINDU LAW 20 (1946).

81 Alessandro Buono, The *King Heir. Claiming Vacant Estate Succession in Europe and in the Spanish World (13th-18th Centuries)* 22(22) L'Atelier du CRH (2020), paras 15 – 17, *available at:* https://journals.openedition.org/acrh/10917 (last visited September 19, 2024).

as an heir.[82] A sequitur of the Roman theory of acquisition is that succession once accepted cannot be renounced, just as how a contract once concluded cannot be unilaterally terminated.[83] It is submitted that the framers of the Succession Act could have adopted either one of the two systems but not both, the two being mutually incompatible.

IV

Testamentary Law in Goa: How Far is it Advantageous?

Part IV of the Succession Act[84] deals with testamentary succession, which was earlier dealt with by the Civil Code[85] and Decree No. 8373 of October 20, 1927.[86] Broadly speaking, there are three types of wills which may be executed in Goa: a public will, a printed open will, and a closed or sealed will.[87] However, in all three cases, it is required to be drawn up before the Special Notary. In case the spouses are married under the regime of communion of assets, consent of the other spouse is necessary under section 219(d)[88] of the Succession Act, which is recorded by drawing up a deed of consent before the Special Notary. The institution of Special Notaries is a remnant of the continental legal system under which certain public officials are appointed by the government for life, empowered generally to authenticate with their intervention all extra-judicial acts and contracts which the parties should or intend to clothe with the character of authenticity such as recording of wills, extra-judicial protests of negotiable instruments, ante-nuptial contracts, deeds of succession, and revocation of wills to name a few.[89] Presently, the civil registrar under the Registration Act doubles up as the Special Notary of the sub-division,[90] arguably justified by the historical background of the state which had considered it expedient to additionally entrust the Special Notary with the powers to execute deeds of conveyance of immoveable property.[91]

Post-colonial jurisprudence views a Special Notary as a public official and a will executed before him carries with it, to borrow the words of the High Court of

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82 *Constancia, supra* note 75, pg. 4.
83 *Succession of Margaret St Pierre Rome*, 1985 LA. APP. LEXIS 10213, pg. 6.
84 Succession Act, *supra* note 17, Part IV.
85 Civil Code, *supra* note 2, Part II, Book III, Title II, Chapter II.
86 Notarial Laws, Decree No. 8373 of October 20, 1927.
87 Succession Act, *supra* note 17, sec. 234.
88 Succession Act, *supra* note 17, sec. 219 (d).
89 Fernando Jorge Colaco, *The Notarial System Institution and the Land Registration System under the Portuguese and Indian Legal Frame Works in Goa, Daman and Diu – Some Glimpses,* in A CONFERENCE ON THE CIVIL CODE IN GOA 29 (1997) (hereafter, 'Colaco').
90 Succession Act, *supra* note 17, sec. 365(1).
91 Colaco, *supra* note 86 at 30.

Bombay at Goa in *Carlos Tavora v. Maria Felicidade Fernandes*,[92] a 'halo' of authenticity and is presumed to be genuine unless shown otherwise, in accordance with the general presumption of regularity attached to acts performed by public officials.[93] However, there are instances where even such wills have been held to be bad in law on account of the cloud of suspicion created by circumstances surrounding its preparation which are sufficient to rebut the presumption, such as the will being written in a language not known to the testator without an accompanying translation, feeble mental health of the testator, or failure of the Special Notary to follow the prescribed procedure such as omitting to mention the date and place of making of the will.[94]

At first, it might appear that preparing a will under the Goan legal system might have its share of benefits. However, as discussed, a person would have to prove that he is governed by the Succession Act before he is permitted to make such a will. In case he is unable to so, a realistic workaround would be to register the will under section 17[95] of the Registration Act[96] as an optionally registrable instrument, thereby conferring on it the same presumption of genuineness as that under the Succession Act.[97]

Additionally, in the case of wills prepared by persons other than Muslims or Indian Christians in Mumbai, Chennai and Kolkata, it becomes necessary to obtain official approval of the will from a court of competent jurisdiction[98] which is conclusive proof of the validity of the will unless revoked in accordance with law.[99] Even in places other than Presidency towns, such probate or letters of administration can be optionally obtained, the alternative being to have the will proved, if doubted, through collateral civil proceedings.[100] Thus, it can be seen that the presumption of validity of a will is not sui generis to Goan succession law. Rather, the will under the Goa Succession Act has a lower evidentiary when compared with the conclusiveness of a probate or letters of administration.

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92 *Carlos Tavora* v. *Maria Felicidade Fernandes,* 2005 S.C.C. OnLine Bom 62.

93 *Id.,* para. 12.

94 *Ajit Sukhija* v. *Edgar Francisco Vales*, Special Civil Suit No 57/2007/B, Decided on January 17, 2023 (Court of Senior Civil Judge at Panaji) paras. 36, 49, 60.

95 The Registration Act, 1908, sec. 17.

96 The Registration Act, 1908.

97 *Arjan Dev Mittra* v. *Sada Nand*, A.I.R. 2000 Del 236, para. 11; *Satya Narain* v. *Jai Prakash Gupta*, 2019 S.C.C. OnLine Pat 609, para 9.

98 The Indian Succession Act, 1925, sec. 213 [Hereafter, 'Indian Succession Act'].

99 *Chiranjilal Shrilal Goenka* v. *Jasjit Singh*, (1992) 3 S.C.C. 507, paras. 15, 16, 20.

100 *M.V. Krishna Rao* v. *K. Shivakumar*, A.I.R. 2015 Mad 298, para. 8. *See generally* Indian Succession Act, *supra* note 95, sec. 2(a), sec. 2(f), sec. 57, Part VIII, Part IX.

V

The (Mis) Deeds of Succession

Upon the death of a person in Goa, it is customary to execute before the jurisdictional Special Notary, an instrument called the deed of succession.[101] Also known as the instrument of declaration of heirship or the deed of *habilitacao de herdeiros*,[102] the drawing up of such a document is done for proving heirship of the deceased and is statutorily recognized as sufficient evidence for effecting a mutation in the revenue survey records, transfer of shares, and withdrawal of money from banks and other financial institutions,[103] although for all other purposes, as held in *Primella Sanitary Products Pvt. Ltd. v. Gurudas Vishwanath Sinai Gaitonde*,[104] a succession deed is only one of the modes of proving heirship and not conclusive proof. In other words, if the statements contained in the deed are found to be incorrect, it cannot bind third parties.[105]

It is noteworthy that prior to the enactment of the Succession Act, the corresponding law was not the Portuguese Civil Code but Decree No. 32033 dated May 22, 1942[106] and Law No. 2049 dated August 6, 1951[107] which enabled the drawing up of deeds of succession for establishing heirship in relation to the deceased. The provisions have been substituted by Section 346[108] of the Succession Act which envisages a summary procedure whereby three persons, who are not subject to disqualifications such as minority, having a direct interest in the deed, or close relationship with the participants to the proceedings,[109] are required to make a statement on oath before the Special Notary along with one of the proposed heirs, who are known as the interested parties, that there do not exist any other heirs of the deceased.[110] Upon the production of the death certificate, will, or other documents evidencing relationship with the deceased based on which status as an heir is claimed,[111] the Special Notary invites objections thereto by publishing an extract thereof in the Government

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[101] Succession Act, *supra* note 17, sec. 346(1).

[102] *Domingos Estevam* v. *Comunidade of Santo Estevam*, 1994 S.C.C. OnLine Bom 238, para 12; Daniel de Bettencourt Rodrigues Silva Morais, *Inventory proceeding according to the Goa Succession, Special Notaries and Inventory Proceeding Act 2012: Still Portuguese law?* LXIV (2) Lisbon L. Rev 255, 258 (2023) [Hereafter, 'Daniel'].

[103] *Ibid*.

[104] *Primella Sanitary Products Pvt. Ltd.* v. *Gurudas Vishwanath Sinai Gaitonde*, 2010 S.C.C. OnLine Bom 1125.

[105] *Id.,* paras 58 – 59

[106] Decree No. 32033 dated May 22, 1942.

[107] Law No. 2049 dated August 6, 1951.

[108] Succession Act, *supra* note 17, sec. 346.

[109] Succession Act, *supra* note 17, sec. 346(6); Succession Act, *supra* note 17, sec. 323.

[110] Succession Act, *supra* note 17, sec. 346(2).

[111] Succession Act, *supra* note 17, sec. 346(3).

Gazette or a local newspaper.[112] If there is no such contest within thirty days of publication, the deed of succession is finalized.[113]

The procedure, otherwise unexceptionable, suffers from two drawbacks. Firstly, the inartistic wording of section 346(3)[114] and section 346(4)[115] of the Succession Act which deal with the documents to be produced by the proposed heirs to prove the death of the deceased and their relationship with the deceased, results in the unfortunate consequence where a party is bound to surrender the original documents to the Special Notary or produce a certified copy thereof. In the case of old documents of which obtaining certified copies is difficult or impossible, due to weeding out of old records or destruction due to natural calamities, the party as well as the Special Notary are rendered helpless. Neither can resort be had to the process of producing secondary evidence under section 58[116] and section 60[117] of The Bharatiya Sakshya Adhiniyam, 2023[118] due to the confinement of their applicability to judicial proceedings, excluding from their purview acts which partake a purely administrative character[119] such as those performed by Special Notaries.[120] It is the submission of the author that the word "produce" in section 346 of the Succession Act must be interpreted on lines similar to the Delhi High Court's ruling in *Aktiebolaget Volvo v. R. Venkatachalam*[121] holding that the use of the term "produce" in the Code of Civil Procedure[122] permits tendering of photocopies of documents to the Court Registry with the originals being produced only for the purpose of inspection by the Presiding Officer of the Court,[123] not unlike a railway passenger who produces a ticket for examination by the ticket inspector by merely showing it to him without parting with its possession.[124]

The second hurdle is faced again on account of the restriction regarding applicability of the Succession Act. As per section 8[125] of the Succession Act, upon the death of a person, his succession opens either at the place of his permanent residence, where his landed properties or moveable assets are situated, or at the place of his death in the state, provided, however he is governed by the Act in the first place. If the Succession Act does not apply to him, he cannot get a deed of

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[112] Succession Act, *supra* note 17, sec. 346(11).
[113] Succession Act, *supra* note 17, sec. 346(13).
[114] Succession Act, *supra* note 17, sec. 346(3).
[115] Succession Act, *supra* note 17, sec. 346(4).
[116] The Bharatiya Sakshya Adhiniyam, 2023, sec. 58
[117] The Bharatiya Sakshya Adhiniyam, 2023, sec. 60.
[118] The Bharatiya Sakshya Adhiniyam, 2023.
[119] *Tata Consultancy Services Ltd* v. *Cyrus Investments Private Ltd.*, (2021) 9 S.C.C. 449, para. 173.
[120] E. S. Subarhmanyam, WOODROFFE AND AMIR ALI'S LAW OF EVIDENCE, Vol. I, 161 (1973).
[121] *Aktiebolaget Volvo* v. *R. Venkatachalam*, 2009 SCC OnLine Del 1481 [Hereafter, 'Aktiebolaget']
[122] The Code of Civil Procedure, 1908 (Act No. 5 of 1908).
[123] *Id.*, para. 24.
[124] Aktiebolaget, *supra* note 118, para 4.
[125] Succession Act, *supra* note 17, sec. 8.

succession executed even though his death may have occurred in Goa. The hardships caused on account of such differential treatment have been considerably mitigated on account of Article 1117[126] of the Portuguese Civil Procedure Code, 1939[127] which permits any person to initiate proceedings for asserting his status as an heir of the deceased. This is enabled on account of the fact that the exclusivist rigours of section 1(4) of the Succession Act do not feature in the Portuguese Civil Procedure Code. In other words, the provisions of the Portuguese Civil Procedure Code, to the extent that they are not repealed by any Indian legislation or subsequent enactment, continue to be enforceable throughout the territory where it is operative, and are applicable to all individuals, unlike the Succession Act whose ambit is confined to a specified category of persons. Thus, Article 1117 embodies the well-established principle that regardless of descent, domicile, or place of permanent residence, an individual carries his substantive law with him wherever he goes, but the procedure to be followed is of the place where the proceedings are initiated.[128] Thus, there is no prohibition on enforcing, under the Portuguese Civil Procedure Code, rights which are beyond the purview of the Portuguese Civil Code and the Succession Act.

This difference in applicability notwithstanding, the nature of proceedings under Article 1117 are remarkably similar to those involved in executing a deed of succession. Upon the death of a person, succession proceedings by those who claim to be the heirs of the deceased are initiated by furnishing a copy of the death certificate to the court having jurisdiction over the place where the applicants are domiciled[129] along with documents establishing their familial relationship with the deceased. Notice is issued to the Public Prosecutor as well as to unknown heirs of the deceased by publication in a local daily calling upon objections from those who claim to have an equal or better right than the applicants within twenty days of publication. If the proceedings are opposed, they have to be contested by the applicants within a period of eight days, with a further eight days period for the intervenors to file a rejoinder. In other words, the proceedings partake the character of judicial proceedings inasmuch as the declaration of heirship is issued by a court of law as opposed to a deed of succession which is prepared by a Special Notary, who is an administrative official.[130] Thus, by holding that the provisions of Article 1117 of the Portuguese Civil Procedure Code are sui generis and cannot be equated with declaratory suits or deeds of succession and are, therefore, not repealed by the Code of Civil Procedure or by section 460 of the Succession Act,[131] subordinate

[126] The Portuguese Code of Civil Procedure, 1939, art. 1117
[127] The Portuguese Code of Civil Procedure, 1939.
[128] Paras Diwan, Peeyushi Diwan, PRIVATE INTERNATIONAL LAW 573 (1998).
[129] Portuguese Code of Civil Procedure, 1939, art. 85(2).
[130] Colaco, *supra* note 86, 29 – 30
[131] Succession Act, *supra* note 17, sec. 460.

courts have granted declaration of heirship even when succession of the deceased was governed by the personal laws prevailing in the rest of India.[132]

VI

Inventory Proceedings: Pitfalls and Promises

In the rest of India, personal laws specify the shares of the claimants to the estate[133] but are silent about the procedure to be followed for the task of actually distributing the estate among the successors. In such circumstances, recourse must be had to the general body of procedural law. In case a mutual understanding can be worked out between the heirs regarding the inheritance, a partition deed can be drawn up and registered, detailing the apportionment of the assets or letters of administration may be obtained.[134] If it is not possible to arrive at an agreement, the remedy lies by way of a partition suit.[135] The position in Goa is slightly different. The Succession Act specifies the order in which the estate of the decedent devolves upon the different categories of heirs,[136] as well as the methodology for dividing the estate left behind, in an amicable as well as adversarial manner, depending upon the circumstances. Whereas section 15[137] read with section 282[138] of the Succession Act recognizes execution of a deed of partition before the Civil Registrar as one of the modes of consensual settlement of inheritance, an alternative is provided to the heirs in the form of inventory proceedings which do not have an equivalent in the corresponding succession laws which prevail in the other parts of the country.[139]

Jurists have described an inventory, when understood in the context of Goan succession law, as a complete description of the estate, comprising of the assets, debts, and liabilities of the inheritance, so that the balance which remains after paying the debts is divided amongst the successors of the deceased, the primary

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[132] *Runa Elizabeth D'Silva* v. *Unknown Heirs of late Mervin D'Silva*, Civil Miscellaneous Application (Port) No 98/2023/B, Decided on September 3, 2024 (Court of Civil Senior Judge, at Panaji, "B" Court), para 9; *Shailaja Arvind Gadvi* v. *Unknown Heirs of Arvind Bappa Gadvi*, Civil Miscellaneous Application (Port) No 139/2018/A, Decided on October 22, 2019 (Court of Senior Civil Judge, "A" Court, Panaji) para 6.

[133] *See e.g. Indian Succession Act*, *supra* note 95, Part V; Paras Diwan, MUSLIM LAW IN MODERN INDIA 212–253 (2021).

[134] *See* J. P. S. Sirohi, INDIAN REGISTRATION ACT 36 (1997); Dinshaw Fardunji Mulla, THE REGISTRATION ACT 341 (2016); Indian Succession Act, *supra* note 95, sec. 2(a), Part VIII, Part IX.

[135] *See Babu* v. *Jagdei*, 1957 S.C.C. OnLine BoR (UP) 44, para 12.

[136] Succession Act, *supra* note 17, sec. 52.

[137] Succession Act, *supra* note 17, sec. 15.

[138] Succession Act, *supra* note 17, sec. 282.

[139] Dario Moura Vicente and Jorge Duarte Pinheiro, FAMILY AND SUCCESSION LAW IN THE PORTUGUESE CIVIL CODE OF 1867: A 21ST CENTURY APPROACH 454 (2014).

purpose being to have equality of shares amongst all co-heirs to the estate of the deceased.[140] There is a divergence of opinion as to whether such proceedings fall within the class of civil suits as understood in the Civil Procedure, with one school of thought placing them in a different category altogether since in a civil suit there is a Plaintiff on one side and a Defendant on the other, whereas in inventory proceedings there are only interested parties, either in their capacity as heirs, legal representatives, beneficiaries under a gift, or legatees under a will. Moreover, in inventory proceedings, there is no decree passed, as is done in a civil suit.[141]

The contrapuntal argument refuses to treat the nature of the proceedings as the determinative criteria for ascertaining whether inventories are in the nature of civil suits, instead preferring to examine the controversy from the lens of the broader definition of the term, 'suit' which encompasses any proceeding in a court of justice by which an individual pursues the remedy which the law affords.[142] An ownership claim to the inheritance of the estate left behind by the ancestors of a party can be realized only when it is legally recognized by enforcing the remedy available under the law in relation to the right of inheritance, which is the raison d'etre of inventory proceedings. When seen from this angle, inventory proceedings have been held to be a sub-category of civil suits.[143]

Either way, under the Succession Act, upon the initiation of inventory proceedings, an elder member of the family is appointed as the Head of the Family, also known as the *Cabeca de Casal* or an administrator of the estate.[144] Inexplicably, certain provisions dealing with the Head of the Family such as the order of priority to whom the said office belongs[145] have been incongruously inserted in Chapter XIII[146] in Part II[147] of the Act entitled "Succession", although there is a separate Part IV[148] dedicated entirely to Inventory Proceedings.

Preparation of an inventory of all the properties of the deceased, subsequent to which they are valued and distributed in accordance with the shares laid down in the Succession Act, is one of the duties of the Head of the Family.[149] If competing claims are made for a particular property which is indivisible in nature, the Act provides for auctioning it off to the highest bidder and distributing the

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[140] *Damodar Ramnath Alve* v. *Gokuldas Ramnath Alve*, 1996 S.C.C. Online Bom 47, paras. 11 – 12.
[141] *Zacarias Durates Pereira* v. *Camilo Inacio Pereira*, 1984 S.C.C. OnLine Bom 59, paras. 25, 27.
[142] C.K. Takwani, CIVIL PROCEDURE 162 (2021).
[143] *Sheela Rodrigues* v. *Lourencinha Ana D'Cruz Rodrigues Fernandes*, 1999 S.C.C. OnLine Bom 109, paras 6 – 12
[144] Daniel, *supra* note 99 at 258, 260; *Ethel Lourdes D'Souza Lobo* v. *Lucio Neville Jude De Souza*, 2022 S.C.C. OnLine S.C. 1251, paras 4, 15 [Hereafter, 'Ethel'].
[145] Succession Act, *supra* note 17, sec. 247.
[146] Succession Act, *supra* note 17, Part II, Chapter XIII.
[147] Succession Act, *supra* note 17, Part II.
[148] Succession Act, *supra* note 17, Part IV.
[149] Ethel, *supra* note 141, para 4.

proportionate value in monetary terms to the other heirs, known as owelty money, subsequent to which a chart of partition is prepared listing out the shares of each heir and the value of such share.[150] Relevantly, on account of section 458[151] of the Succession Act, the Code of Civil Procedure is inapplicable to inventory proceedings, and it could be argued that the legislators opted for a summary inquiry by following the basic principles of natural justice so as to ensure speedy and expeditious disposal of the case.

However, the ground reality for the ordinary litigant has been a mixed experience. On one hand, the summary procedure has enabled Court to provide relief to parties who are governed by the Succession Act but are unable to execute a deed of succession or choose not to do so before the Civil Registrar, by resorting to section 373(1)(b)[152] of the Succession Act which allows a person to initiate inventory proceedings for division of the inheritance as well as obtaining a declaration of heirship of the deceased simpliciter, in consonance with the decision in *Domingos Estevam Monteiro v. Comunidade of Santo Estevam*[153] wherein the High Court of Bombay at Goa expressly held that the question as to who is an heir of a deceased person is to be necessarily determined through either a deed of succession or by instituting an inventory.[154] This is also in agreement with the time-honoured principle of statutory interpretation under which plurality of remedies, whether under the same or different statutes can never be doubted[155] and a party has the right to elect a remedy of his choice unless one of the two is explicitly barred.[156] Consequently, on the basis of the statement of oath of the Head of the Family which has presumptive evidentiary value,[157] coupled with corroborative documents of lineage, judicial acknowledgement of heirship has been granted by following the summary procedure under inventory proceedings,[158] provided, however, it is proved that the deceased and interested parties are governed by the Succession Act.[159]

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[150] Ethel, *supra* note 141, para 15.
[151] Succession Act, *supra* note 17, sec. 458.
[152] *Succession Act*, *supra* note 17, sec. 373 (1)(b).
[153] *Domingos Estevam Monteiro* v. *Comunidade of Santo Estevam*, 1994 S.C.C. OnLine Bom 238.
[154] *Id.,* para 12.
[155] *Bihar State Cooperative Marketing Union Limited* v. *Uma Shankar Sharan* (1992) 4 S.C.C. 196, para 6
[156] Justice G. P. Singh, PRINCIPLES OF STATUTORY INTERPRETATION 147 (2013) [Hereafter, 'G.P. Singh'].
[157] *Succession Act*, *supra* note 17, sec. 378.
[158] *Sanjyot Raya Kamat Ghanekar* v. *Raya Narayan Kamat Ghanekar*, C.M.A. No.25/2021/B, Decided on April 1, 2022 (Court of the Civil Judge Senior Division, Panaji, "B" court); *Chandrashekhar Ramnath Naik* v. *Late Aditi Chandrashekhar Naik,* C.M.A. No.72/2022/B, Decided on December 9, 2022 (Court of the Civil Judge Senior Division, Mapusa, "B" court)
[159] *Sunil Vamanketkar* v. *Vaman Bhaskar Ketkar*, 2023 S.C.C. OnLine Bom 1183, paras 2 – 6

On the other hand, it cannot be said that a summary enquiry will invariably ensure a speedy decision.[160] Even in inventory proceedings, the Court retains the discretion to permit the parties to lead evidence in certain cases,[161] and protracted inventories with multiple rounds of appellate litigation, typified by the landmark judgment in *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*[162] are not unknown. The decision is well-known for the effusive encomiums heaped on the Civil Code of Goa which was benchmarked as a model secular legislation for the rest of the country, modelled on the lines of Article 44 of the Constitution.[163] That the said verdict of the Supreme Court arose out of an appeal against an interlocutory order of a Senior Civil Judge and merely held that the properties situated outside Goa are also governed by the Civil Code[164] without bringing to a closure, proceedings which had been pending for more than 20 years,[165] surprisingly, did not raise any eyebrows.

It is worthwhile to note that information by the author obtained under the Right to Information Act[166] reveals that from January 1, 2020 to December 31, 2020, of the 512 inventory proceedings which were filed in the sixteen courts of Civil Judge, Senior division, and Civil Judge, Junior Division in South Goa, 426 were disposed of, amounting to a disposal rate of 83.2%. Interestingly, during the same period, 1014 regular and special civil suits were filed out of which 693 were disposed of, which amounts to a disposal rate of 68.34% suggesting that inventory proceedings are a quicker alterative to distribution of assets of the estate leaver in comparison to a civil suit, although further research would be necessary to validate the findings by confining the study to cases disposed of by judgment.

VIII

Conclusion: Reform, Not Uniform

There is no gainsaying that the family laws of Goa, when juxtaposed with the personal laws prevailing in other parts of the country, create a fertile academic ground for analysing the merits and demerits of maintaining religious autonomy vis-à-vis the desirability of communal unity and parity in legislative matters, to the extent that the debate surrounding the implementation of a Uniform Civil Code has

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[160] Devendra Damle, Jitendra Madaan *et. al.*, CHARACTERISING CHEQUE DISHONOUR CASES IN INDIA: CAUSES FOR DELAYS AND POLICY IMPLICATIONS 19 – 20 (2022).

[161] *Succession Act*, *supra* note 17, sec. 394(2), sec. 395(3), sec. 402, sec. 419(6), sec. 435(2).

[162] Jose, *supra* note 57.

[163] Jose, *supra* note 57, paras. 24 - 25, 31.

[164] Jose, *supra* note 57, para. 37.

[165] *Maria Luiza Valentina Pereira* v. *Jose Paulo Coutinho*, (2009) 1 Mah LJ 204, paras 1 – 5

[166] Information provided by the Public Information Officer of the District and Sessions Court, South Goa, Margao to the author (May 2, 2024).

become the causa celebre for members of the legal fraternity, elected representatives, and civil society.[167] Unfortunately, in the process, the comparatively anodyne nuts and bolts of the existing family laws in force in Goa as well as other parts of India, rarely form part of the reform agenda, despite the inequities caused by the lacunae therein.

It is the author's submission that there is a need to amend section 1(4) of the Succession Act to ensure territorial operation of its substantive as well as procedural provisions. The territoriality theory[168] postulates that judicial as well as administrative authorities have complete jurisdiction over the subject of a law depending upon the place of occurrence of the cause of action. To put it differently, if a person's death occurs anywhere in Goa, his testamentary as well as intestate succession ought to be brought within the scope of the Succession Act, regardless of his domicile or birthplace, akin to Article 62[169] of the Law of Marriage as a Civil Contract which permits individuals governed by their respective personal laws to register their marriage in Goa by complying with the local procedural formalities. Denial of access to justice on the ground of paucity of documentary evidence pertaining to a person's nativity cannot be countenanced by any legal system which has its foundations rooted in fairness.

Additional loopholes in the Succession Act, some of which have been pointed out above need to be plugged. The acceptance-transmission of inheritance dichotomy must be resolved and litigants should be permitted to tender photocopies of documents for the execution of succession deeds while retaining the originals, which need not be surrendered but may be shown to the Special Notary in case the photocopies are suspected to be of dubious authenticity.

More importantly, it must be noted that there is absolutely no guidance about the law which is to be applied when situations arise involving conflicts between the personal laws prevalent in the rest of India and the succession law of Goa. For example, if only one parent is governed by the Succession Act, will the child still be within its purview? If a native of Goa who has been permanently residing with his family for many years in some other part of India passes away, will his heirs be forced to knock the doors of a court in Goa or will the court having jurisdiction over his place of residence or place of death have to be approached? Such questions are bound to arise as the significance of Goa's geographical boundary diminishes and

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[167] *See generally* Soni Mishra, *Code of Conflict*, THE WEEK (Feb. 18, 2024) 20 – 25; *PM doubles down: "Time for secular code", one poll*, THE TIMES OF INDIA (Aug. 16, 2024, Goa) 1, 4; K. J. Alphons, *Uniform Civil Code: No bad time for a good law*, THE INDIAN EXPRESS (Jul. 7, 2023) *available at:* https://indianexpress.com/article/opinion/columns/uniform-civil-code-no-bad-time-for-a-good-law-8799478/ (last visited on Sep. 18, 2024).

[168] Rollin M. Perkins, *The Territorial Principle in Criminal Law*, 22 Hastings L.J. 1155, 1155 (1971); *State* v. *Narayan Mangilal Dayame*, A.I.R. 1958 Bom 68, para. 10.

[169] Law of Marriage, *supra* note 5, art. 62.

migration becomes the norm. Rather than leave the issues involved to be decided on a case-to-case basis by the concerned courts with scanty precedents available for assistance, it is the submission of the author that the principles of private international law must be codified in to the Succession Act in order to bring about certainty in the justice delivery process. In the memorable words of Salmond, "Case law is gold in the mine — a few grains of the precious metal to the ton of useless matter — while statute law is coin of the realm ready for immediate use."[170]

However, till such an exercise is undertaken, it might be profitable to determine the extent to which personal laws and the Indian Succession Act, 1925, are applicable and enforceable in Goa, although a detailed examination of the issue is beyond the scope of this article. Upon the liberation of Goa, Daman and Diu and its annexation to the Republic of India, several legislations such as the Indian Penal Code,[171] the Negotiable Instruments Act,[172] and the Evidence Act[173] were extended to Goa by the Goa, Daman and Diu (Laws) Regulations of 1962[174] and 1963.[175] Certain statutes such as the Code of Civil Procedure,[176] and the Easements Act[177] were extended to Goa by individual legislations enacted for the specific purpose by the Parliament or the Legislative Assembly.[178] Pertinently, personal laws and the Indian Succession Act were not extended to Goa. However, the precise meaning of the term "extend" is not clear. In this sense, does "extend" mean extend to the territory of Goa as a whole, including the people residing therein as well as the institutions responsible for enforcing the laws sought to be extended? Take the example of a Hindu family natively from Mumbai which has shifted to Goa for a couple of years, where the Hindu Succession Act, 1956[179] has, admittedly, not been extended. By this view, the moment the family enters the territorial boundary of Goa, they cease to be governed by the Hindu Succession Act since it does not exist at all in the territory of Goa. Neither can they claim any rights thereunder, and hence, if a suit for partitioning the estate of a deceased member of the family were to be filed by them, courts in Goa would have no jurisdiction to entertain it.

On the other hand, the second view holds that omission to extend a succession law statute to a territory is only with reference to those limited classes of persons who are instead governed by the corresponding law in force and not to the institutions

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[170] John Salmond, JURISPRUDENCE 179 (1924) [Hereafter, 'Salmond'].
[171] The Indian Penal Code, 1860.
[172] The Negotiable Instruments Act, 1881.
[173] The Indian Evidence Act, 1872.
[174] The Goa, Daman and Diu (Laws) Regulation, 1962.
[175] The Goa, Daman and Diu (Laws) No. 2 Regulation, 1963.
[176] The Code of Civil Procedure, 1908.
[177] The Indian Easements Act, 1882.
[178] *See* The Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration Act) Act, 1965; The Goa, Daman and Diu (Extension of the Indian Easements Act) Act, 1978.
[179] The Hindu Succession Act, 1956.

therein, which undoubtedly are equipped to entertain proceedings emanating from it, provided the cause of action has arisen within their territorial jurisdiction. By this understanding, the Hindu Succession Act has not been extended to Goa only to the extent of those who are governed by the Goa Succession Act, whereas the Hindu Succession Act would continue to apply to other individuals in the territory of Goa, As far as courts in Goa are concerned, the question of extending the Hindu Succession Act does not arise since they continue to have jurisdiction to try disputes arising therefrom, whether or not the Act has been extended. Thus, according to this view, the family from Mumbai would continue to be governed by the Hindu Succession Act even during their stay in Goa and a suit thereunder would be maintainable in a civil court in Goa. The author submits that since traditionally, it is the individual which has been the subject of Family Law,[180] the second view is the correct view, apart from being in accord with the general presumption in favour of jurisdiction of courts[181] and the principle of private international law laid down by the Privy Council in *Balwant Rao v. Baji Rao*[182] that irrespective of migration, it is the personal law of the individual which determines matters of succession.[183]

On the contrary, there is a disparate world of thought which espouses the view that central legislation automatically stands extended to any territory which becomes a part of the Indian Republic subsequent to the enactment of the law in question, and any attempt to expressly extend it, on the lines of the 1962 and 1963 Regulation, is superfluous.[184] However, in practice, at the subordinate court level where the law is actually enforced, the result has been a melange of conflicting, internally inconsistent decisions with certain courts entertaining petitions for division of assets under the Hindu Succession Act,[185] as well as for grant of probate[186] and succession certificates[187] under the Indian Succession Act; while other have declined relief on the ground of lack of jurisdiction.[188]

It is heartening to note that higher courts have made sincere attempts to shed light on the vexed question of jurisdiction in succession-related matters involving issues

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[180] Naomi R. Cahn, *The Moral Complexities of Family Law*, 50(1) STAN. L. REV. 225, 229 (1997).
[181] Dinshaw Fardunji Mulla, THE CODE OF CIVIL PROCEDURE, Vol. 1, 111 (2017).
[182] *Balwant Rao* v. *Baji Rao*, (1920 – 1921) 25 C.W.N. 243 (P.C.) (Appeal taken from India).
[183] *Id.*, at 246. *See also* John D. Mayne, A TREATISE ON HINDU LAW AND USAGE 36 – 37 (1878); *Dayame, supra* note 64, para 5.
[184] G. P. Singh, *supra* note 153 at 1149 – 1150. *See also Nandlal* v. *Motilal,* (1977) 3 SCC 500; *Post Office* v. *Estuary Radio Ltd,* [1967] 3 All E.R. 663, page 680.
[185] *See Shujit Prakash Ohrie* v. *Mala Saharia,* Special Civil Suit No.40/2022/A, Decided on June 27, 2023 (Court of the Senior Civil Judge at Panaji).
[186] *See Ayesha Rodrigues* v. *Eva Rodrigues*, OCMA/5/2023/A, Decided on April 19, 2024 (Court of the Civil Judge, Senior Division, at Margao.
[187] *See Sanjay Bakrania* v. *Indumati Bakrania*, CMA No.109/2024/II, Decided on November 9, 2024 (Court of the Civil Judge, Senior Division, IInd Additional at Margao).
[188] *See Smita Suresh Ghorpade* v. *Suresh Dhondiba Ghorpade*, CMA No. 179/2024/D, Decided on November 22, 2024 (Court of Civil Judge, Junior Division, 'D' court at Margao).

of private international law. Reading the Indian Succession Act harmoniously with the Goa Civil Courts Act, 1965,[189] in *Papiya Sarkar v. Som Subhra Sarkar*[190] it was clarified by the High Court of Bombay at Goa that applications for succession certificates must be filed in the Court of Civil Judge, Senior Division,[191] although it is the District Court which has jurisdiction under the Indian Succession Act. [192] More such decisions are necessary in order to cleanse the waters which are bound to muddied when two distinct systems of laws are conflated.

The difficulties, however, are exacerbated in the case of individuals who, though governed by the Succession Act, have established their abode beyond the frontiers of the state. Unlike central legislations dealing with personal laws, in relation to which it is possible to argue that they stand extended, albeit by varying degrees to Goa, section 1(2)[193] of the Goa Succession Act is explicit in terms of confining its applicability to the state. While it may be unrealistic to expect a sub-registrar in Bengaluru to execute a will of a person from Goa in accordance with the Succession Act, given that he might not even be maintaining the requisite paraphernalia and wherewithal, such as the Book of Wills in accordance with section 235[194] of the Act, could the will in question be registered under the Registration Act by applying the substantive Goan law of succession? This submission, though appealing, cannot be accepted for more than one reason. Firstly, it would amount to distorting the plain language of section 1(2). Secondly, the Act being a self-contained Code, either applies in its entirety or not at all to a given territory, and as stated by the Supreme Court in *Syndicate Bank v. Prabha D. Naik*,[195] the distinction between substantive and procedural law in such circumstances becomes merely academic.[196] Lastly, the presumption against extra-territoriality militates against such dissected extension of a legislation enacted by a state legislature. As stated by the Privy Council in *Raja Jogendra Narayan Deb v. Debendra Narayan Roy*[197] apropos the Bijni Succession Act[198] passed by the provincial legislature of Assam:

> *The question next in order is whether the Act purports to have effect outside Assam and if so whether it must be held to be invalid in part or in whole on this account… While there may be force in the consideration that the Assam Legislature would little like to see the house in Calcutta or the rajbati*

[189] The Goa, Daman & Diu Civil Courts Act, 1965.
[190] *Papiya Sarkar* v. *Som Subhra Sarkar*, 2024 S.C.C. OnLine Bom 2465.
[191] *Id.,* para 16.
[192] Indian Succession Act, *supra* note 95, sec. 371.
[193] Succession Act, *supra* note 17, sec. 1(2).
[194] Succession Act, *supra* note 17, sec. 235.
[195] *Syndicate Bank* v. *Prabha D. Naik*, (2001) 4 S.C.C. 713
[196] *Id.,* para 18. *See also* Salmond, *supra* note 167 at 497.
[197] *Raja Jogendra Narayan Deb* v. *Debendra Narayan Roy*, 1942 S.C.C. OnLine P.C. 3 (Appeal taken from India) [Hereafter, 'Raja']
[198] The Bijni Succession Act,1931.

> *at Benares descend in a different line of succession from that provided in that Act for the Assam estate, it may not have been thought wise to attempt to bring within the Act lands in another province.*[199]

It is commendable that purposive interpretations given by certain courts have reduced the parochial rigours of the letter of the law in Goa as far as inheritance proceedings are concerned. The rule laid down by Morton J in *Frothingham v. Shaw*[200] that the law of the domicile must be given an extra-territorial effect by the courts of a foreign country, so that "in a just and proper sense the succession is said to take place by force of, and to be governed by, the law of the domicile" has been adopted,[201] albeit indirectly, and properties situated outside Goa can now be included in inventory proceedings. Although this required doing some amount of violence to the plain language of Article 24[202] of the Civil Code which specifically provided that immoveable properties situated in the kingdom of Portugal would be governed by Portuguese law, and by necessary implication left out those situated outside which were to be governed by the respective local laws in accordance with the maxim *expressio unius est exclusio alterius*,[203] courts have favoured the principle of unity of succession according to which disposition of the estate leaver's assets, wherever they are located, is to be governed by a single, consistent law, whether it is of the decedent's final domicile or nationality.[204] It is the submission of the author that this principle needs to be engrafted into the Succession Act by amending section 1(2) on the lines of section 1(2)[205] of the Hindu Marriage Act,[206] so as to read as, "It shall extend to the whole of the State of Goa and applies also to persons governed by this Act who are outside the territories to which it extends." The principle of unity of succession would furnish the necessary territorial nexus for extending its scope beyond the state's borders, and make it constitutionally tenable. Section 8(2)[207] of the Succession Act which deals with the place of opening of succession would also have to be accordingly amended to delete references to the state of Goa. Doing so would give teeth to the reasoning of the Bombay High Court in *Sia Virendra Kamat v. Virendra Damodar Kamat*[208] which had considerably widened the jurisdiction of courts in other states of India in relation to causes of action arising out of Portuguese

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[199] Raja, s*upra* note 194, page 14.

[200] *Frothingham* v. *Shaw*, 1899 MASS. LEXIS 1002.

[201] *Id.,* page. 3

[202] Civil Code, *supra* note 2, art. 24.

[203] Black's Law Dictionary 620 (Bryan A. Garner, ed., 2004).

[204] *A. P. Fernandes* v. *Annette Blunt Finch*, (2015) 6 MAH L.J. 717, paras 6 – 25; Jose, *supra* note 57, para. 32; Carol S. Bruch, *The Hague Convention on the Law Applicable to Succession to the Estates of Deceased Persons: Do Quasi-Community Property and Mandatory Survivorship Laws need Protection?* 56 L & CP 309, 313 (1993); Simeon E. Baldwin, *The Hague Conference of 1904 for the Advancement of Private International Law,* 14(1) Y.L.J. 1, 3 – 4 (1904).

[205] Hindu Marriage Act, 1955, sec. 1(2).

[206] Hindu Marriage Act, 1955.

[207] Succession Act, *supra* note 17, sec. 8(2).

[208] *Sia Virendra Kamat* v. *Virendra Damodar Kamat*, 2021 SCC OnLine Bom 5397 [Hereafter, 'Sia Virendra Kamat']

law. In that case, an objection had been taken to the transfer of annulment proceedings under Article 20[209] of the Law of Divorce from Margao, Goa to Mumbai on the ground that courts outside Goa have no jurisdiction to try and entertain the case. Rejecting the argument, the High Court held:

> *It cannot be said that just because parties are of domicile of Goa and are governed by Portuguese Civil Code, then exclusively Goa Court will have jurisdiction as the Court while dealing with cause brought before it need to adjudicate the claim having regard to the legal provision/enactment by which such relationship is governed. [sic]* [210]

Thus, if sections 1(2) and 8(2) of the Succession Act were to be so amended, any court outside Goa would be competent to entertain a claim arising under the Act so long as the succession of the deceased opened within its jurisdiction, though the Act itself may not strictly be in force in the area where it is situated.

Even at the relatively more mundane level of executing instruments before the Special Notary, the Succession Act falls somewhat short of a reform in the real sense of the term. Despite vast advancements in information technology and at a time when E-Governance and digitisation is being promoted and piloted,[211] it is unbelievable that wills or deeds of relinquishment of inheritance, declaration of heirship, and consent, are statutorily required to be hand-written.[212] Difficulties are exacerbated when such documents have to be relied upon during litigation and are found to be illegible.[213] Alternatively, wasteful typed copies may have to be mandatorily filed on account of Bombay High Court Appellate Side Rules even when the writing therein is clear.[214]

Lastly, the importance of fixing accountability on the officers responsible for implementing the succession law in Goa cannot be overemphasized. Anecdotal evidence abounds regarding the arbitrariness, inefficiency, and corruption in the

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[209] Law of Divorce, *supra* note 6, art. 20.

[210] Sia Virendra Kamat, *supra* note 205, para 12. *Cf. Saeesh Subhash Hegde* v. *Darshana Saeesh Hegde*, A.I.R. 2008 Kar 142, paras. 20 – 27; *K. Radha Krishnan Nayyar* v. *Smt. Radha*, A.I.R. 1992 J&K 1, paras. 8 – 11.

[211] *See* Aman Singh, *'Beyond imagination': PM Modi lauds Digital India programme at G20 meet*, HINDUSTAN TIMES (Aug. 19, 2023) *available at:* https://www.hindustantimes.com/india-news/pm-modi-highlights-india-s-technological-transformation-and-digital-inclusion-at-g20-meeting-101692433802859.html (last visited on Jan. 4, 2025).

[212] Succession Act, *supra* note 17, sec. 2(z), sec. 35(2), sec. 315.

[213] *See generally Ibrahim* v. *The Regional Transport Authority*, W.P. (C) No. 22708 OF 2022, Decided on July 13, 2022 (High Court of Kerala); *'High Court miffed with doctor's bad handwriting'*, NAVBHARAT TIMES (Dec. 15, 2017) *available at:* https://timesofindia.indiatimes.com/city/lucknow/high-court-miffed-with-doctors-bad-handwriting/articleshow/62082121.cms (last visited on January 4, 2025); Satyasundar Barik, *Orissa HC directs doctors to write post-mortem reports, prescriptions in capital letters or in legible handwriting*, THE HINDU (Jan. 8, 2024) *available at:* https://www.thehindu.com/news/national/other-states/orissa-hc-directs-doctors-to-write-post-mortem-reports-prescriptions-in-capital-letters-or-in-legible-handwriting/article67716358.ece (last visited on Jan. 4, 2025).

[214] The Bombay High Court Appellate Side Rules, 1960, Chapter IX, Rule 1(v).

functioning of the offices of the Special Notaries.[215] Though the Succession Act envisages an Appellate Authority in the form of the District Notary, strangely, it provides for no right of appeal. If the Special Notary refuses to perform an act which he is statutorily required to do so, he must record the reasons for his refusal, subsequent to which the aggrieved party may request the Special Notary to reconsider his refusal.[216] Should the Special Notary refuse to reconsider his decision within forty – eight hours, he is bound to forward the case file to the District Special Notary who shall affirm, reverse, or modify the order of the Special Notary within three days.[217] In practice, however, this procedure is rarely followed as demands of expediency prevail over concerns of righteousness, strengthening Dimock, Dimock, and Koening's assertion of the Indian 'clerk' or 'babu' being the kingpin of Indian administration, since ninety percent of the work originating at the clerical level is okayed at the top level.[218] Although the Succession Act contemplates disciplinary proceedings[219] as well as punitive provisions for errant Special Notaries,[220] as argued by Praveen Gedam and Arghya Sengupta, no reforms in the administration would be meaningful unless the statute in question is amended and measures are introduced to complete an inquiry within a reasonably short, statutorily prescribed period of time during which other stakeholders, including senior officials and affected persons, are still around and consequences of the employee's misconduct are fresh in memory.[221] It is also necessary that the quantum of punishment proves to be an effective deterrent and major punishments such as dismissal or demotion ought to be made mandatory under the Succession Act, at least for corruption, inefficiency, lack of delivery, insubordination, gross negligence and frequent absenteeism; not mere transfers or denials of promotion which are the usual forms

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[215] *See Advocates demand accountability & transparency at sub-registrar offices*, THE GOAN (Aug. 21, 2022) *available at:* www.thegoan.net/goa-news/advocates-demand-accountability-transparency-at-subregistrar-offices/87963.html (last visited on Sep. 18, 2024); *Neshwin*, *supra* note 39; *Plaint filed against Salcete sub-registrar*, THE TIMES OF INDIA (Feb. 7, 2018) *available at:* https://timesofindia.indiatimes.com/city/goa/plaint-filed-against-salcete-sub-registrar/articleshow/62811879.cms (last visited on 18 September 2024); *Pernem sub-registrar under radar for alleged corruption*, THE TIMES OF INDIA (Jul. 17, 2011) *available at:* https://timesofindia.indiatimes.com/city/goa/pernem-sub-registrar-under-radar-for-alleged-corruption/articleshow/9251943.cms (last visited on 18 Sep. 2024); *Advocates' panel files plaint against Salcete Civil Registrar for delays in deed approvals*, HERALD (Jan. 4, 2024) *available at:* https://www.heraldgoa.in/goa/advocates%E2%80%99-panel-files-plaint-against-salcete-civil-registrar-for-delays-in-deed-approvals/216081 (last visited on Jan. 4, 2025).

[216] Succession Act, *supra* note 17, sec. 320(1), sec. 320(2).

[217] Succession Act, *supra* note 17, sec. 320(3).

[218] M. Laxmikanth, PUBIC ADMINISTRATION 6 (2011).

[219] Succession Act, *supra* note 17, sec. 314 (3); sec. 349, proviso (iii) of sec. 348.

[220] Succession Act, *supra* note 17, sec. 361, sec. 362.

[221] Praveen Gedam and Arghya Sengupta, *Why Govt Jobs Should Be Less Secure*, THE TIMES OF INDIA (Jun. 17, 2024, Goa) 8.

of chastising a public servant for misbehaviour, underperformance, or breach of duty.[222]

On March 13, 2024, the President of India gave her assent[223] to the much-vaunted[224] Uniform Civil Code of Uttarakhand.[225] That it took nearly a year for the State Government to finalize the rules framed under the Act[226] and enforce it[227] brings to mind the prophetic lines of Dr. B. R. Ambedkar uttered during his last speech in the Constituent Assembly, which are applicable to any attempt at bringing out about a new legal order: "Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile".[228] As for the remediless common man in Goa who has to run from pillar to post to obtain documents to prove that he is governed by the Succession Act before he can execute a relinquishment deed, register a will, or file inventory proceedings, ask him if he is proud to have a Uniform Civil Code or would he prefer to be governed by his respective personal law, and the answer will be similar to the words of Justice Markandey Katju, although uttered in a different context: "So far as the public is concerned, is it not a difference between Tweedledum and Tweedledee?"[229]

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[222] Avirook Sen, AARUSHI 58 (2015).

[223] *With Prez nod, U'khand first to implement UCC*, THE TIMES OF INDIA (Mar. 14, 2024) 1, 5.

[224] *See generally* Kausar Jahan, *Why Uttarakhand Uniform Civil Code is a step towards equality and progress*, THE INDIAN EXPRESS (Feb. 8, 2024), *available at:* https://indianexpress.com/article/opinion/columns/uttarakhand-uniform-civil-code-step-equality-progress-9151101/ (last visited Sep. 18, 2024); *UCC adopted by Uttarakhand will become equality template for all: CM Dhami*, BUSINESS STANDARD (Jun. 24, 2024) *available at:* www.business-standard.com/india-news/ucc-adopted-by-uttarakhand-will-become-equality-template-for-all-cm-dhami-124062300697_1.html (last visited 18 Sep. 2024).

[225] The Uniform Civil Code, Uttarakhand, 2024.

[226] The Uniform Civil Code Rules, Uttarakhand, 2025.

[227] The Uniform Civil Code, Uttarakhand, 2024 came into force on January 27, 2025. *See* Gazette Notification No. 101/XX-5/25-03(10)2024-T.C-II/2025 Dehradun (Home Section-5, Government of Uttarakhand, January 27, 2025).

[228] *Constituent Assembly Debates, Vol. VII* (November 4, 1948) (remarks of Dr. B. R. Ambedkar on the motion *re.* Draft Constitution) 44.

[229] Markandey Katju, *A judiciary beyond redemption*, OUTLOOK (Oct. 17, 2015) *available at:* www.outlookindia.com/national/a-judiciary-beyond-redemption-news-295629 (last visited on Sep. 18, 2024).