

GOVERNMENT OF GOA

LAW COMMISSION

Protection of Institution of Marriage

Report No. 21

March 2012

LAW COMMISSION, GOA

(REPORT No. 21)

Protection of Institution of Marriage

Forwarded to the Chief Minister, Government of Goa by Shri Ramakant D. Khalap, Chairman, Law Commission, Goa on the 25th day of March 2012.

The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010-LD(Estt.)/LC/530 dated 05/04/2010).

The Commission consists of the Chairman, and the two Members.

Chairman

Shri Ramakant D. Khalap

Members

Shri Cleofato Coutinho

Shri Mario Pinto Almeida

The Law Commission is located at B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa.

**The text of this Report is available on the internet
www.goalawcommission.gov.in**

**Any enquiry relating to this Report should be addressed to the O.S.D. to
Chairman/ Acting Secretary and sent either by post to the Law
Commission, B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa or email
to chairman-glc.goa@nic.in or rdkhalap@rediffmail.com**

Report

The Department of Law has referred to us several letters, beginning with letter dated 11/08/2011 and culminating with the latest letter dated 16/03/2012 all received by several dignitaries and authorities including President of India, The Governor of Goa, Chief Minister of Goa and many others all sent by one Smt. Antonia Michelle Abel resident of Alto, Porvorim, Goa.

Smt. Antonia Michelle Abel has raised several issues in her letters referred to above all pertaining to the law relating to Marriage and Divorce among Catholics, the Concordata between The Holy See and The King of Portugal and its validity vis-à-vis the Constitution of India, the jurisdiction of the Archbishop of Goa over territories of Goa, Daman and Diu and the so called “overseas provinces of Portugal” prior to their liberation from Colonial Rule, properties and funds of the Church in Goa and the authority of the Archbishop in relation to the same, Feasts, novenas and other festivities being held by the Church in Goa and many more issues which we need not enumerate here.

We have culled out two specific issues out of the several raised by Smt. Abel and they are as under:

1. Constitutional validity of the “Concordata” i.e the treaty signed between the Holy See (Pope in the Vatican City) and the King of Portugal dated 7th May 1940, and
2. The law relating to the right to solemnize marriage among the Catholics in conformity with the canonical laws and its subsequent registration in the books maintained by the Civil Registrar and the right of the authorities of the Church to annul such marriage despite the same being registered in the books of the Civil Registrar.

The first issue of Constitutional validity of the Concordata is a complex issue pertaining to the sovereign States of India, Portugal and Vatican City. We have had no time to study this issue in all its complexity and therefore refrain from expressing any opinion there on.

We however have studied the second issue of law relating to Marriage and Dissolution or annulment of marriages among Catholics in Goa and are of the opinion that the power vested in the Church under canonical law to grant dissolution and annulment of marriage solemnized under canonical law is an anachronism on the principle of uniformity of law relating to Marriage and the Constitution of India in as much it discriminates unfairly between couples getting married under canonical laws and those under the civil law despite the fact that all marriages require registration under law relating to Marriages and Divorce as contained in Decree No.45461 which is otherwise uniformly applicable to all.

The said decree inter alia provides,

- i) that marriages of Catholics can be solemnized either before the Civil Registrar or before the Ministers of the Catholic Church as per canonical law.
- ii) That spouses getting married under canonical laws renounce their civil right of seeking divorce.

As per the prescribed procedure spouses willing to get married complete the civil formalities before the Civil Registrar who issues a certificate that there is no impediment under civil law for the Catholic spouses to get married under canonical laws and thereafter the marriage is solemnized before the Minister of the Church. The said Decree No.45461 further prescribes that a marriage so solemnized can only be annulled by the Ecclesiastical Tribunal and no other authority. The Decree does not prescribe any condition for annulment of marriage by the Ecclesiastical Tribunal.

Thus, the Ecclesiastical Tribunal has arbitrary and unfettered discretion to annul a marriage. The travesty of the whole thing is that the High Court has to enforce the judgement of the Ecclesiastical Tribunal without any enquiry as to its conformity with Public Policy and the Constitution.

In fact, Goa's tall claim of having a fairly Uniform Civil Law relating to marriages and divorce stands seriously jeopardized by the canonical provisions.

We therefore propose that by The Civil Courts duly constituted under the Civil Courts Act alone should be competent to declare and grant separation, divorce or annulment of a marriage. Report No.21 and the Draft Bill to this effect are appended hereto.

RECOMMENDATIONS

It is therefore recommended that No Marriage whether performed before the Registrar of Marriage or before any religious authority be dissolved only by a Decree of a competent Civil Court. The Bill annexed hereto may be enacted in the Legislative Assembly.

We recommend accordingly.

(Ramakant D. Khalap)

Chairman

(Cleofato Coutinho)

Member

(Mario Pinto Almeida)

Member

GOA PROTECTION OF INSTITUTION OF MARRIAGE ACT 2012

ACT NO... of 2012

An Act to provide for the Protection of the Institution of the Marriage registered in the Register of Marriages under the Civil Registration Act.

Be it enacted by the Legislative Assembly of Goa in the year 2012 as follows:

1) Short title, extent and commencement: -

This Bill may be called the Goa Protection of the Institution of the Marriage Act 2012

- a) It extends to the whole of the State of Goa.
- b) It shall come into force at once

2) Definitions: -

- a) **“Civil Court”** shall mean and include the Court having jurisdiction to entertain the subject matter and shall include the Civil Courts established under the Goa Civil Courts Act.
- b) **“Marriage”** shall mean and include all marriages found registered in the Office of the Civil Registrar in the Book of Register of Marriages whether the same are celebrated by the Ministers of the Church or the same are transcribed in the Register of marriages maintained by the Civil Registrar within the State of Goa.

Part I

1.- Prohibition of cancellation, annulment and dissolution of marriages by any authority other than the Civil Court.

Notwithstanding anything contained in any other law, decree, custom, usage or contract no marriage whether celebrated by the Ecclesiastical Authorities or by the Government Officials under the relevant law and registered in the Register of Marriages maintained by the Civil Registrars within the State of Goa or transcribed in the Books or the Registers maintained by the Civil Registrars within the State of Goa shall be cancelled, annulled or dissolved or held to be without effect without there being a proper adjudication by the Court of the Civil Judge leading to a judgment and decree of a competent civil Court established under the Goa Civil Courts Act .

2. Repeal and savings

For the removal of doubts, it is hereby stated that, in case of any inconsistency between the provisions of this Act and any other Act, law, decree, custom or usage the provisions of this Act shall prevail and any law, custom, enactment, usage to the contrary shall stand repealed.

STATEMENT OF OBJECTS AND REASONS

WHEREAS in the State of Goa prior to the Liberation of Goa the laws were enacted by the Portuguese Government and such laws were extended to the Territory of Goa;

AND WHEREAS the Portuguese Government under article 22 of the Treaty with the Holy See bound itself to acknowledge civil effects to the marriages solemnized in conformity with the canonical laws and consequently by the Decree No. 45461 it was decreed that marriage in the Portuguese colonies could be solemnized in the presence of the Government employees responsible for the work of civil registration as per the civil laws or before the ministers of the Catholic Church as per the canonical laws and under the conditions imposed by the civil law for such cases ;

AND WHEREEAS under the said decree it was ordained that by the very fact of solemnization of the canonical marriage the spouses renounced the civil right of seeking divorce and it was further provided that the Civil Courts shall not have the power to decree the same in relation to such marriages;

AND WHEREAS with the Liberation of Goa in the year 1961 Goa ceased to be part of the Portuguese Colonies and became integral part of the Union

of India and the Constitution of India came to be extended to the area which was earlier a Portuguese Colony ;

AND WHEREAS the said decree No.45461 continued to be in force in the State of Goa and consequently it is the Civil Registrar who processes the papers filed by the willing spouses and after complying with the formalities issues a certificate that there is no impediment under the civil law for the spouses to be married and thereafter the marriages between the Catholics are celebrated by the Ministers of the Catholic Church and after the solemnization of the marriage by the Church the same is transcribed in the records of the Civil Registrar and produce all the civil effects;

AND WHEREAS under the said Decree 45461 it was further legislated that the marriages celebrated by the Ministers of the Catholic Church could only be annulled by the Ecclesiastical Tribunal and no other authority;

AND WHEREAS it has been observed that the Ecclesiastical Courts do not observe any principles of adjudication such as examination and cross examination of the parties and their witnesses and apart from that they do not have any procedure established by law and are not subject to the scrutiny of the authorities constituted under the Constitution of India ;

AND WHEREAS the said Decree No. 45461 does not contain the grounds on the basis of which such adjudication is to be arrived at permitting arbitrary and unfettered discretion to the Tribunal unknown to any judicial system despite the fact that said judgment of the Ecclesiastical Tribunal is to be enforced by the High Court of the State without any inquiry into the same.

AND WHEREAS under the Code of Civil Procedure as extended to the State of Goa even the execution of foreign judgments is subject to the same being in conformity with the civil laws of the State of Goa and the Union of India ;

AND WHEREAS the said Decree leads to an unreasonable discrimination making the same ultra vires the Constitution of India.

NOW THEREFOR it is imperative that the said system of enforcement of the judgments pronounced by the Ecclesiastical Tribunal should be abolished and the marriages whether celebrated by the Ecclesiastical authorities or transcribed in the Books of the Civil Registrar in the Register of Marriages be held to be valid and subsisting and having civil effects until and unless the Civil Court of competent jurisdiction has adjudicated

the same as per the laws of the land which are equal to all its citizens without any distinction of the creed of the persons whose marriages have been registered in the Books of the Civil Registrar hence a new Act as per the proposed draft is enclosed for the consideration of the Government.