

By ALBERTINA ALMEIDA



Today's Zero Discrimination Day. While we would all agree that every day should be Zero Discrimination Day, such commemoration allows us to foreground the existing discrimination so that it ends. The focus, this year is on the urgent need to take action against discriminatory laws. Discrimination can be actively perpetrated by individuals and the State in the way they conduct themselves with those who are marginalized, and it can also be actively perpetuated by not doing what the State is duty bound to do.

In the context of this year's theme, it may be useful to scan some of the laws that continue to affirm caste-based discrimination in Goa. The Devasthan Regulation Act, which is the English translation of the Regulamento das Mazanias is one of them. It is applicable in Goa because it was codified by the Portuguese, and there was no corresponding law from India that was extended to Goa post 1961. The Devasthan Act is rife with caste-based discrimination which is justified by construing the temples as privately owned, implying that, because the temples are private, no one can interfere in their functioning, and no 'third party' can claim rights. But the truth of the matter is that even private parties are expected to abide by the Constitution of India. Compliance with the Constitution implies/ requires that no one can practice caste discrimination, even in their home.

The Constitution of India is very strong not just on prohibiting discrimination based on caste, but on actively making amends for the casteism that has been perpetuated in the past, with positive discrimination, that is, special equitable provisions. But how the State reconfigures caste by circumventing these amazingly just constitutional provisions, through its legislation, is something that needs to be seriously looked at.

Section 9 of the Civil Procedure Code outlines what kind of cases civil courts are competent to try, and what kind of cases are excluded. This provision ensures that a suit for declaration by a member of caste not invited to a caste dinner, or suit against expulsion of a member from a particular caste, or a suit involving purely religious ceremonies, would not be a civil suit tryable by a civil court. While this section may be seemingly progressive in that the Court does not have to burden itself with the internal schema of a particular caste, it effectively ensures that like the proverbial three monkeys who see no evil, hear no evil and speak no 'evil'. As such, the Court does not take on board such cases, permitting these social practices on the grounds that the same occur in the private sphere.

Casteism is, therefore, reinforced by Section 9. Castes, that is to say upper castes alone, are given the autonomy to function as they please. A caste has the right to own and manage property, and to sue in courts. A caste can even sue for maintenance of caste rules. They are

technically not seen as caste groupings because the way it is manoeuvred is to enable them to hide under the garb of *private* (sic) religious institutions and secure autonomy. For instance, the Gaud Saraswat Brahmin community, which is literally the ruling community in Goa, has been identified as a religious community by the Supreme Court.

Thus caste groupings often desire to be considered not just a group entity but a private entity! The issue of an individual's (read depressed caste's) right to entry into a temple and into its sanctum sanctorum is presented from the 'private' lens, that is, if it is my house, you cannot assert your right to enter my house, and the logic that follows is that if it is 'our' temple, you cannot assert *your* right to enter *our* temple. We own the temple and consequently the land, and therefore *you* (meaning castes other than the ruling caste) live on our land, and have rights to this land, only at our mercy, and provided you continue to render the caste-based services we expect from you. Recognizing that this is a way of reinforcing caste and a feudal relic, the *Bombay Inferior Village Watans Abolition Act, 1958*, was enacted to abolish this system. We do not, as yet, have an equivalent law reform in Goa.

Consequently, caste-based occupational slavery of being able to enjoy full tenurial rights to land only when the *mahars* beat the *dhol* (drum), continues under the garb of the Devasthan Act. So much so that, as can be seen in the case of Ibrampur in Pernem, the obviously most needy targets of the Government's *Sansaad Adarsh Gram Yojana (2014)* cannot get the benefits of the scheme. According to the response from the Panchayat of Ibrampur-Hankarnem to the residents of Harijanwada, the NOC for setting up the public infrastructure that the residents of Harijanwaddo have expressed their need for, is not given by the owner of the land, i.e. the local Devasthan, as the residents are not fulfilling their traditional caste obligations. If that be so, what is the sense of this model village scheme, where casteism continues unabated?

Another example is how politicians enlist support and draw political allegiance on the basis of caste. Is it a coincidence that the two major cities of Goa, Panaji and Margao, are known to elect only Gaud Saraswat Brahmins for the last three decades or so? And one does not know of any instance, where the enforcement systems have clamped down on caste-based mobilisation. The disadvantaged castes also do not have the social capital that is required to pursue prosecution or to pursue a case in the Court. Thus caste is alive and kicking in Goa.

And so, even when it comes to constitution of Internal Complaints Committees (ICC) in temples, under the purview of the *Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013*, the revenue authorities are quoted as advancing a ridiculous argument that an ICC cannot be constituted because only males (and that too male descendants of the mahajans) can become mahajans and the ICC must

comprise of representation of women, and therefore such a Committee cannot be set up. This deliberately naïve argument ignores, however, the fact that women are, and always have been, labourers in the temple. Further, that these women invariably belong to the depressed castes. Here again, conveniently, the location of the temple as a workplace is overlooked. And the depressed castes and women will deliberately excluded from the ICC.

Further, even the much hyped Family Laws of Goa still have caste based distinctions. The chapter titled Usages and Customs of Gentile Hindus of Goa, provides under Article 13 that the dancing girls and the *Bhavin*s are permitted to adopt a relative belonging to their own caste only in the absolute absence of issue, and Article 27 which stipulates that the Hindu Brahmins shall always take oath on the book *Shree Bhagwad Gita* and the other castes on the coconut, betel, areca and rice. It is argued that these provisions are not presently implemented. It is true that the oath is not on the items as above mentioned. But why should it then stay on the Statute Book? Why is there no express repeal of the law to save the confusion?

How long will we continue to let casteism mar the intelligence of Goa?

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