



By ALBERTINA ALMEIDA

Illegal but Legalisable: On What Basis?

Goa is about to make sale and development of orchard land a criminal offence that could attract imprisonment of one year. When revealing this information, Vijai Sardesai, the Town and Country Planning Minister claimed that 20 lakh square metres of land had been illegally converted across Goa, and that an amnesty period would be given to those who had illegally developed land to seek conversion from the Town and Country Planning Board by March 31, 2018.

In recent times, one has seen several such legislative moves in Goa sending messages contrary to their avowed purpose. No sir, we have a law that makes your action illegal, but yes sir, we can make an exception for you. Or, yes, sir, it is going to be declared illegal, but no need to worry sir, there is a window period before that, during which you can make it legal.

So the proposed law announced by Town and Country Planning Minister will have the garb of being stern about illegalities and holding people to account for violations of the law, by considering those violations criminal offences. But clearly, it is, in effect, a way to regularize illegal conversions of land, without necessarily giving any reason to regularize the illegal conversion. Also, what is the basis on which the exception during the amnesty period is sought to be made? What is the rationale for this exception? Or is the exception being made through an amnesty period actually the rationale for the impending law?

Just like the proposed law of orchard land conversions, there has been a trend by the State in subverting the rule of law. Legislatively though. The problem is not with making exceptions, in the law or for implementation of laws, per se. There can be good reasons to make exceptions as was done when it came to the dwellings of the members of the fishing community in respect of the CRZ law, by the Ministry of Environment, Forests and Climate Change of the Government of India. There was a reasoned decision given as to why the exception was made.

The Constitution of India is designed to consider exceptions in certain circumstances. Article 14 of the Constitution stipulates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This has been interpreted through various Judgements of the Supreme Court of India to mean that you can have laws that apply to everybody and you can also have exceptions made for a certain set of persons, or you can have special laws for a certain set of persons. It is called affirmative action. But when these exceptions are made, there has to be a rationale. They cannot be arbitrary exceptions. There has to be a reasonable classification for exceptions. One has to show how these exceptions meet Constitutional guarantees.

But the legislation and legislative moves that we are reading about these days, seem to have turned this Constitutional principle of reasonable classification on its head. In the sense that there is no rationale for the exceptions that are being made, there is no rationale for amnesty periods, and there are no criteria for either the exceptions or the different processes for the exceptions.

Another such legislative amnesty without rationale was made last year in Goa. Here the Government sought to make unauthorized constructions legal, first through an ordinance called the Goa Regularisation of Unauthorized Construction Ordinance, 2016, and then in August, 2016, through the enactment of the Goa Regularisation of Unauthorized Construction Act, 2016, with a deadline for regularization of houses built within 180 days, which period was then further extended.

Under the legislation, there was a designated officer authorised to scrutinize the application received for regularization. This officer had to then hold an enquiry, as he deems fit, and conduct site inspection. Thereafter, this officer was supposed to pass an order of regularization of such unauthorized construction, subject to payment by the applicant of charges, taxes, fees and penalty.

Again, what was the rationale for passing such a law and that too with an amnesty period? If there are some good reasons why unauthorized constructions should be regularized, then they may as well be good reasons (and which should be specified) as such for all time,

without an amnesty period. Was this law not again an imperative to shield illegal constructions across the board in the categories referred to in the legislation? Prior to this, there was anyway a procedure for regularization of illegal constructions if they came within the ambit of law even if the application for construction was not made, with certain penalties involved. Reasoned exceptions were also made in terms of building rules, when it comes to mundkarial constructions in the mundkarial area. And this was socially well taken. So what difference did the new law make? What purpose was sought to be achieved through this new law?

Another example of making the illegal legal without a rationale, is the Goa Government's announcement that it would give one-time financial assistance on humanitarian grounds to those persons who were directly or indirectly involved in the freedom struggle of Goa (meaning freedom from Portuguese rule), but could not be declared as freedom fighters, for failing to meet eligibility conditions as provided under the Freedom Fighters Welfare Rules. The Government has reconstituted a high powered committee to decide cases of grant of financial assistance, with no terms of reference to this reconstituted Committee, as to the basis on which they can make the exceptions. That too once this Committee decides, the Government has to give these 'new' freedom fighters a lumpsum amount. The facility of lump sum amount does not seem to be even available to freedom fighters who meet the eligibility conditions. The Committee is reported to include the Chief Secretary, Finance Secretary, Additional Secretary, Home Secretary, the President of the Ponda Freedom Fighters' Association and the President of the Goa, Daman and Diu Freedom Fighters' Association, with the Under Secretary (Home) as Member Secretary. Having a high powered committee seems to be a *modus operandi* of the state to justify the arbitrary decisions made by the State by bypassing the Law.

Now if the eligibility conditions for being considered freedom fighters were inappropriate, then they should have been changed. If there were reasons to make exceptions, then these needed to be set out. The circumstances under which exceptions can be made needed to have been set out. Otherwise, why have a law or set of rules in the first place? Would this not be a *carte blanche* for arbitrariness with arbitrary procedures depending on who approaches the bodies or officers designated to permit the exceptions?

In sum, we are witnessing legislation that does not add anything Constitutional to the already

existing body of law. As a matter of fact, this kind of problematic legislation gives the State the tools to harass lay persons, and benefit the rich and powerful. Or at other times, such legislation is actually an instrument to bypass the true spirit of the already existing law.

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