

It is an established principle that for people to comply with a law, it must be clear and certain. However certainty remains elusive in Goa, where there are increasing disputes on which provisions of the Portuguese Civil Code, the Portuguese Civil Procedure Code and the Portuguese Commercial Code continue to be applicable either to Goa or to Goans.

Are Portuguese laws still applicable to Goa? Yes, some Portuguese laws, or, rather, some provisions of them, are still applicable to Goa. Some may debate whether these laws can be called Portuguese laws or not. However, setting aside nomenclature, the fundamental issue lies in the absence of a comprehensive list detailing which provisions from Portuguese laws remain applicable to Goa or its residents. Hence, uncertainty regarding the applicability of specific provisions or sets of provisions.

This came to the fore recently when the advocate for Pooja Sharma in the Assagao case célèbre, in the application for anticipatory bail, contended that his client has the right to use force, to evict a trespasser. It was canvassed by the Advocate for the said Pooja Sharma that as per Article 486 of the Portuguese Civil Code, the owner of a property is entitled to evict the trespasser by himself or by taking recourse to the Court. This argument was sought to be countered by the Additional Public Prosecutor for the State who submitted that the Applicant being a Non-Goan cannot claim the benefit of Article 486 of the Portuguese Civil Code. The High Court of Bombay at Goa, in its wisdom, remained silent on this point, apparently seeing it as irrelevant to decide on the application for anticipatory bail.

Now, this poses three questions – whether Article 486 of the Portuguese Civil Code is still applicable to Goa, post its integration into India. Two, in so far as those provisions of Portuguese Civil Code which are still applicable, whether the same are only applicable to Goans. Three, who are Goans?

Section 486 details what measures can be taken by the possessor of a property when confronted with trespass. But others may argue that the possessor of a property can file a civil suit, let's say, seeking reliefs under certain Indian Laws like the Specific Relief Act. So now when Central laws like the Specific Relief Act, or, for that matter, the Transfer of Property Act, have been extended to Goa, after Goa's integration into India, the question remains whether Articles like Article 486 of the Portuguese Civil Code would still be applicable to Goa. When laws float in such grey zones, opportunism or illegality have the potential to flourish.

If such a provision like section 486 is considered to be applicable, it would be applicable to Goans as well as non-Goans, because it is a law of the land, and it pertains to measures to deal with land. It is another matter altogether when it comes to family and those provisions relating to Portuguese Civil Code which are in the chapters relating to marriage, or

guardianship, because those laws are personal and applicable to Goans alone.



Again, the definition of who is a Goan is elusive, in that the definition of Goans is defined in the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012, but only for the purposes of that law.

There are other provisions that put many Goans in a quandary. For instance, there is a provision in the Portuguese Civil Code, but not in the sections that pertain to family laws, that parents cannot sell property to one child, without the consent of the other children, and also a judgement of the Bombay High Court that this provision, is indeed applicable to Goa.

Now when a person purchases property that is so sold to one of the children, the Registrar himself is not educated on this provision, and neither are the present day lawyers because the Portuguese Civil Code is not taught in college, and since there is no clarity about which provisions of the Portuguese Civil Code continue to be applicable, who will be that teacher and how will such a teacher put these provisions together, even if it were to be taught? Since the Indian law – the Transfer of Property Act, which governs matters relating to transfer of property is extended to Goa, most are unlikely to refer to the Portuguese Civil Code for anything on the subject.

When it is stated that there is no certainty in the law, some argue that we have the Goa Daman and Diu (Administration) Act, 1962, which clearly sets out that on subjects where the pre-1961 Indian laws have not been extended to Goa, or where Indian laws have no provisions on the subject, any Portuguese laws or provisions on those subjects can apply. Now the question would be which provisions are these. It is problematic to have to skim through an entire Portuguese Civil Code, or Portuguese Civil Procedure Code, or any other Portuguese laws, for that matter, which, incidentally, are not entirely translated by the Government, and still more problematic, when the law allows for interpretation on even whether that law is applicable to Goa or Goans or not. It is about looking with a microscope at the Indian law and also the Portuguese laws, and then trying to make sense. This leaves lot of room for uncertainty and is a minefield for powerful wheeler dealers to thrive.

It, therefore, makes sense, once and for all, to set the matter at rest and clarify to Goa, Goans and the world, as to what law is applicable to Goa, and/or to Goans. This would need the setting up of a law commission or a committee, which should have practicing lawyers, and people extensively engaging with the law, and must also factor diversity. Once the list of provisions is compiled, it could be codified. The draft of the codified law, could then be placed before the Goa Legislative Assembly, where it could be enacted as law, so that at least from henceforth, there is no confusion as to which law applies.

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Calling Attention of all Goa MLAs: Need for Codification of all Residual Portuguese Laws

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