

Portuguese Renaissance in the 21st Century

A long pending due indeed that the Goa Succession, Special notaries and Inventory Proceedings bill, 2012 (“**the Bill**”) has been passed by the Legislative Assembly on 5th August, 2016 which has obtained the Governor of Goa’s assent on 19th September, 2016. Thereafter, the Bill has become The Goa Succession, Special Notaries and Inventory Proceeding Act, 2012 (Goa Act 23 of 2016) (“**the said Act**”). The said Act is to be said to come in force on the 90th day from the date of its publication in the Official Gazette i.e. 21st December, 2016.

Before having the said Act in place, Goa was governed by the Portuguese Civil Code 1867 (“**Code**”). This Code that has been in force in Goa, is commonly known as the family law that dealt with succession and inheritance which was applicable to the State only. This Code treated all the people of Goa on equal footing. However, there was a need felt to have the Code to be made workable. The driving force to making such a change the need of the hour was that the provisions in the Code are in Portuguese language and hence the courts, the members of the bar and the litigants faced practical difficulties in their applications causing delays in disposing of the cases. The other difficulties faced were in regard to the devolution of Title of properties as personal laws had to be examined to determine the ultimate beneficiary(s) of the asset. The laws in force were applicable to a different set of political circumstances, and hence it was necessary to amend the law to meet the present day requirements.

The Portuguese Civil Code is now presented in English thus eradicating the interpretational/translation hindrance caused to the Courts, the government officials and the people of Goa. The said Act further tends to take more humane and fair outlook in order to adapt to the social change.

The Statement of Object to the said Act states that “A pressing need was felt to consolidate the various provisions of law into one comprehensive, rational and integrated legislation to facilitate their application and implementation by the bench, the bar and the litigants.”

The said Act is thus an act to consolidate and amend the law of intestate and testamentary succession, notarial law ad laws relating to partition of an inheritance and matters therewith. The said Act is divided into 4 (Four) parts viz., Part I- General Provisions, Part II- Succession, Part III- Special Notaries and Part IV- Inventory Proceedings. Salient Features of the said Act are a) provides for inheritance and succession to be treated as a normal suit under one umbrella in the court and not under the inventory matters, b) It has additionally capped the time for succession and inventory proceedings to 30 (thirty) years from the time of

death of the land owners, c) defined terms like (i) authentic document; (ii) Head of Family; (iii) Matrimonial regime; (iv) Moiety Holder etc.

Despite being an innovate step by the legislative; it seems that there a lot of unresolved matters which also have been included. In addition to the same, the Act seems to travel beyond matters of succession by including matters such as Relative incapacity, disposition by an adulterous spouse, dealings with Special Notaries, communion of assets etc.

Although there is a wide consensus on the view that the Portuguese Civil Code should have been simply re-edited & re-codified instead of enacting the said Act by way of a separate legislature, the enactment of the said Act was a much needed change for consolidation and interpretation of personal laws in Goa.

ANB Legal Team - Goa.

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