

CUNHA GONÇALVES

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Dr. Luíz da Cunha Gonçalves (1875-1956) is indeed one of the forgotten great men of Goa. Nowadays he is heard of, only occasionally, in the Courts, in the course of arguments to support, on the authority of his name, some more complex point of the Portuguese Civil Law still in force in Goa.

His 'opus magnum' is his "Treatise of Civil Law" in 15 volumes (about 11727 pages) being an exhaustive analytical study of each and every provision of the Portuguese Civil Code of 1867 which itself runs into 2538 Articles. Judged by its quality and extent the treatise will certainly rank amongst the masterpieces of Jurisprudence. It is characterised by a brilliant originality of juridical intuition. Behind every set of provisions of the Civil Code, Cunha Gonçalves with his immense legal culture, juristic perspicacy and very Indian commonsense, brings out the analytical and synthetic significance and interplay of concepts and legal rules. The commentary consists of a comparative study of the provisions of the 1867 Code with similar provisions of all the Civil Codes of the time from the European Continent and Latin America. The historical antecedents of every provision are invariably traced right back to the Roman and other ancient legal systems. The treatise unlike many commentaries which are seen nowadays is not a mere bibliographic collection or transcription of quotations and citations from other works. It is an original exposition of the author's views, founded on comparison, antecedent, court pronouncements and most of all on the authors superior intelligence and overview of the law.

Personal Background

His family belonged to the village of Divar (Piedade) but Luíz was born in Panjim where his family occupied a house, still in existence its original form at 31st January Road, later renamed Cunha Gonçalves Road by the Panjim Municipality. His father was an advocate, a Lyceum professor and Director of the Panjim Public

Library. His elder brother Caetano Gonçalves also a jurist, eventually became a justice of the Portuguese Supreme Court. So also his nephew Carlos Renato Gonçalves Pereira was a judge of the Portuguese Supreme Court and another nephew Armando Gonçalves Pereira was an Economist, Advocate, Judge and Writer and eventually Minister of Foreign Affairs in one of the recent Democratic Governments in Portugal. Luiz da Cunha Gonçalves was himself a nephew of Dr. Gerson da Cunha, another Goan celebrity of the 19th century who was a famous Physician, Orientalist and Historian. The Gonçalves family at the time of its conversion in the 16th century had its origin in a family of Sinais (Shenvis) from the historical village of Cortalim whose gaonkars in those times were always regarded as the very cream of Goan Society for their brilliance and aristocracy.

Young Luíz da Cunha Gonçalves, like many of his community, particularly in those times, had a deep sense of attachment to the ancient culture of his country. In the Lyceum course he studied Marathi. In 1924 he wrote a book on "Hindu and Mohameddan Law". It is told that once in front of an audience in Portugal he wrote konkani in the Devnagri and Modi scripts.

He was initially enrolled as advocate in 1896 at the young age of 21 years and had already acquired a distinguished clientele including the king of Sundem and many Desais or feudal chieftains. He however migrated to Moçambique in 1898, where he continued his law practice and also gathered some savings and in 1902 went to Coimbra University, where in 1908 he obtained his Licentiate and in 1909 the Doctorate in Law.

In those times (1909) in Portugal Doctorates in Law were not very common and normally the few persons who succeeded in acquiring a Doctorate were normally absorbed as professors in the universities which at that time in Portugal were only three, Coimbra being the oldest and most prestigious.

A question much debated amongst the admirers of Cunha Gonçalves in Portugal, Brazil and Goa is, how is that this remarkable scholar did not become a law teacher in his own university of Coimbra from which he obtained the Doctorate in 1909?

In his university batch there were four other distinguished students who rose to become professors in law faculty. In the first two

years Cunha Gonçalves came second, very close to first rank holder and in the remaining three years as well as in the Licenciature he ranked first. In the Doctorate he came third, and in the competitive examination for the university chair he failed. It is said that in 1909 he tried competing with a pure Portuguese student 10 years younger than him for a vacant chair in the Law Faculty and the younger man obtained it by a very small margin of marks.

How did it happen and why?

It could not be that the then 34 year old academic had grown dull, because from that time onwards his intellectual output for the next forty years was indeed extraordinary. Some of the few survivors of that time do recall that he was indeed flout very successful in the competitive exam. But there are others including himself who believe that he was victim of some kind of discriminatory treatment. This is indeed very hard to believe considering that Goans never faced this kind of problem at least in the last 150 years of their association with the Portuguese; in fact they rose on merits to the highest positions in the public life in Portugal including next of kind of Cunha Gonçalves himself.

The incident appears to have left a deep scar in him till the end of his life.

Apart from the above incident it is a fact that in Portugal itself his talent was not given the deserved recognition during his lifetime.

His was a life of bitter personal experiences and he took to lifelong study and writing as a means to forget unpleasant memories. In fact in the preface of his celebrated Treatise of Civil Law, he states that, writing and studying has been for him the best way to forget injustice of men and the ills inherent to social life.

He however received overwhelming applause in Brazil where he was invited in 1947 and spent three months receiving homages, banquets, titles and honours. In 1981 on the occasion of 25 years after his death his son gifted his vast library to the office of Attorney General of the Portuguese Republic, stating that he would like that the books on which his father laboured for fifty years should

remain in the hands of lawyers to whom his late father dedicated all his work.

As stated by the Attorney General of Portugal in 1982, the Treatise of Civil Law has no peer in Portugal. The treatise became an indispensable tool in the hands of judges, jurists, lawyers, notaries, registrars and teachers of law. At the time of publishing his treatise, from 1929 onwards the illustrious author used to only practice in his chambers giving advice and issuing legal opinions. It appears that he did not practise at the bar. In Portugal certainly he is the tallest figure in the field of jurisprudence, but one could say without hesitation that he certainly ranks among the great jurists of the world. The Attorney General of Portugal in an Article written in 1982 in the Gazzete of the Portuguese Law Ministry (January 1982) frankly questions his countrymen whether it was fair to keep silent as to the revered memory of this great jurist. He also states that this noted Portuguese citizen hailing from Goa climbed the ladder of life on his own efforts and without help and lifted Portuguese law and jurisprudence to the highest levels attained in this subject in other countries.

After his education he spent many years dedicating himself to agriculture and management of family properties. It was only in the 1930's after he had published several works that he was invited to join the faculty by the academic council of the Advanced Institute for Economic Sciences of the Technical University of Lisbon. He thought Corporative Law a new subject created at that time till 1945 when he attained the retirement age.

He was also a member of the Colonial Council (later renamed Overseas Council), Member of the Committee for selection of Government Attornies, Land Registrars and Notaries and Member of the permanent committee for International Law.

Dr. Luíz da Cunha Gonçalves also had a stint in politics. Around the same time when he was appointed a university professor he was elected a Deputy of the National Assembly (Portuguese Parliament) for Nova Goa constituency. He did not stand out for eloquence of interventions in discussions. Public speaking was not, admittedly his vocation. But he collaborated intensely in the preparation and discussion of various laws like those relating to service, contracts, industrial accidents, industrial property, house lea-

ses; so also his dedicated collaboration in legislature and drafting committees is worth mentioning. He also assisted the government, even outside the Assembly in revising various legislative projects. Some of these are as follows:

- (i) He fully drafted the Decree Law No. 13725 of 3/6/1927 relating to Intellectual Property and also drafted the proposed ammendment to the same in 1932;
- (ii) He reviewed the draft Decree Law No. 19126 of 16/12/1930 which, as is well known, effected major alterations in the Civil Code;
- (iii) He reviewed the project of Civil Registration Code of 1932, introducing therein important alterations;
- (iv) He reviewed the project of the Law of Bankruptcy of 1935 which came to be inserted into the Code of Civil Procedure 1939;
- (v) He elaborated the project of Decree Law No. 21758, of 22/10/1932, which introduced in Portugal the concept of Civil insolvency and also came to be integrated into the Code of Civil Procedure of 1939;
- (vi) He reviewed the Legislative Bill on industrial property presented to the National Assembly;
- (vii) He drafted at the request of the law minister a Legislative Diploma to ammend the provisions of Art. 183 of the Commercial Code.
- (viii) He drafted as a member of Permanent Committee on Maritime Law, the project of ammendment to Book III of the Commercial Code the reafter converted into the Draft Bill for Code of Mercantile Navigation of India, East Africa, Spain, France, Italy and Switzerland, but his triumphant journey was in 1947 when he spent three months in Brazil, where he was honored and feasted for his extra ordinary legal and literary talents.

He had a long list of academic titles namely:

- (1) Doctorate of Law of University of Coimbra.
- (2) Honorary Professor of National University of Brazil, the First Portuguese citizen to be given such a recognition.

- (3) Honorary Professor of the Law of Faculty of Rio de Janeiro. At that relevant time the only other person holding this honour was the President of Brazil.
- (4) Honorary Doctorate of the University of São Paulo.
- (5) Honorary Doctorate of the University of Recife.
- (6) Member of the Academy of Sciences of Lisbon.
- (7) President of the Dictionary Committee of the said Academy.
- (8) Member of the Academy of the Moral and Political Sciences of Madrid.
- (9) Honorary member of the Academy of Jurisprudence and Legislation of Madrid.
- (10) Member of the Academy of Jurisprudence and Legislation of Mexico.
- (11) Member of the Academy of International Cultural Union of Sevilla.
- (12) Member of the International Committee of Radio Electricity, Paris.
- (13) Member of the International Law Association.
- (14) Member of Jahibuch des Volksrechts of Frankfurt.
- (15) Member of International Institution of Ibero American studies.
- (16) Member of the Institute of the Bar Councils of Rio de Janeiro and São Paulo.
- (17) Member of Institute of Procedural Law of Peru.

The intellectual curiosity, capacity, and ability as reflected in his writings and works, assumes astounding proportions. Besides the field of Jurisprudence and law for which he is best known he found time to cultivate with remarkable ability the fields of History, Archaeology, Sociology, Etnography, Literature, Philology, Philosophy, Art, Religion and Poetry.

In all these fields he produced works which have been described as erudite. He mastered various languages besides Portuguese and had a good knowledge of Sanskrit, Konkani, Hindustani, Latin, French, English, Spanish, Italian and German.

Among his works published in the field of Law the following deserve to be mentioned:

- 1901 - Jurisprudence of The High Court of Nova Goa, one Volume, 175 pages.
- 1905 - Evolution of The Labour Movement in Portugal, one Volume, 248 pages.
- 1906 - The Problem of Codification of Civil Law, one Volume, 124 pages.
- 1907 - Liability of The State For The Acts of its Agents, one Volume, 128 pages.
- 1908 - Colonial Taxation Theory of Legislature, one Volume, 169 pages.
- 1909 - Selected Themes in Law, one Volume, 26 pages.
- 1909 - Started the publication of Purchase and Sale in the Portuguese Commercial Code, Volume I, 535 pages.
- 1912 - Publication of Purchase and Sale in the Portuguese Commercial Code, Vol.II, 364 pages.
- 1912 - Aerial Navigation (aviation) in the face of the law, one Volume, 52 pages.
- 1913 - Causes of Criminality according to the New Psychopathological School, one Volume, 24 pages.
- 1916 - Public Subscription in Private Law and Commentary to the Portuguese Commercial Code, Vol. I, 626 pages.
- 1918 - Commentary to the Portuguese Commercial Code, Vol. II, 652 pages.
- 1920 - Commentary to the Portuguese Commercial Code, Vol. III, 626 pages.
- 1924 - Purchase and sale in Brazilian Commercial Law, Vol. I 520 pages.
- 1924 - Hindu and Mohammedan Law, Vol. I, 370 pages.
- 1931 - Civil Responsibility in Aerial Navigation, Vol. I, 122 pages.
- 1929 - He started publication of his treatise of Civil Law in commentary to the Portuguese Civil Code as follows:
 - 1st Volume, 864 pages, in 1929;
 - 2nd Volume, 750 pages, in 1930;
 - 3rd Volume, 804 pages, in 1931;
 - 4th Volume, 787 pages, in 1932;

- 5th Volume, 816 pages, in the same year;
- 6th Volume, 828 pages, in 1933;
- 7th Volume, 776 pages, in 1934;
- 8th Volume, 792 pages, in the same year;
- 9th Volume, 796 pages in 1935;
- 10th Volume, 784 pages in 1936;
- 11th Volume, 777 pages, in 1937;
- 12th Volume, 816 pages, in 1938;
- 13th Volume, 784 pages, in 1940;
- 14th Volume, 866 pages, in 1942;
- 15th Volume, 487 pages, in 1944;

In the meanwhile he published the following:

- 1934 - Necessary Reforms in the Portuguese Civil and Commercial Legislation, one Volume, 52 pages.
- 1935 - Principles of Corporative Law, one Volume, 310 pages.
- 1936 - The Newspaper and it's Juridical Life, one Volume, 125 pages.
- 1939 - Civil Liability for Labour Accidents and Sicknesses, one Volume, 528 pages.
- 1950 - Principles of Luso-Brasilian Civil Law, Vol. I, 510 pages, Vol. II, 1132 pages, Vol III, 300 pages.
- 1952 - Ownership and Possession, one Volume, 240 pages.

In the field of history some of his works are as follows:

- 1896 - The Tomb of Afonso de Albuquerque.
- 1898 - Paintings and Sculptures in the City of Goa.
- 1901 - The Cathedral of Goa.
- 1922 - Rural Life in Alentejo.
- 1926 - Episode of a Tragedy
- 1928 - Camões was not in Macau.
- 1934 - Aryans and Semites in the Beginning of Civilization.
- 1935 - The Epic of the Religious Missionaries Overseas.
- 1947 - Camonian Studies.
- 1949 - Brief consideration of the New Spanish Theory of the Origin of Medieval Councils.

Such was the life and work of this most eminent Goan. Apart from renaming a small lane in Panjim as Cunha Gonçalves Road, his compatriots in Goa, true to their tradition have ignored him both during his lifetime and after. Before 1961, Goans were obviously waiting for the Portuguese to take the lead so that they could ape it. When the Portuguese themselves began to honour Cunha Gonçalves to the extent deserved, Goa had already been liberated and Goans were now busy following the trends of the times 'inter alia' forgetting and concealing even their knowledge of the Portuguese language let alone showing any other links with that country.

The reinstatement of Cunha Gonçalves in public memory in a befitting manner was left to another eminent legal luminary of our times, Mr. M. S. Usgaonkar, Senior Advocate recently elevated to the high post of Additional Solicitor General of India, the first Goan to rise on merits to the highest levels in India in the field of Law and who has been the principal pillar for the survival of Portuguese Law in Goa.

Extracted from:

- (i) *Boletim do Ministério da Justiça, No. 312, January 1982.*
- (ii) *Luiz da Cunha Gonçalves (1875-1956): Jurist, Comparative Lawyer and Orientalist by J. Duncan M. Derrett*
- (iii) *Private notes of Adv. M. S. Usgaonkar.*