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**THE GOAN CIVIL CODE: A GREAT SUCCESS OR A STEEP FAILURE?**- Kratee Aggarwal & Sunidhi Agrahari<sup>1</sup>**ABSTRACT**

One nation, one rule: an idyllic and alluring notion, has been discreetly encapsulated within the Part IV of the Constitution of India, 1950 containing the Directive Principles of State Policy (“DPSP”). While drafting the Indian constitution, Jawaharlal Nehru, Dr B.R. Ambedkar, and other prominent leaders of our country had jostled to establish a uniform civil code (“UCC”) that would be deployed as the governing law on marriage, divorce, adoption, maintenance, inheritance, and succession, amongst others, and would be uniformly applicable to all extant religious communities of India. However, faced by the scorching protests from the then religious leaders and the general ignorance of the majority, the proposal for a UCC was downplayed and was instead added to the list of DPSPs.

Part IV, Article 44 of the Indian Constitution directs the State to endeavour to secure for the citizens a UCC throughout the territory of India. A UCC is referred to a set of civil laws that governs all sections of the society equally, irrespective of caste, creed, sex, or religious affiliations. Accordingly, a UCC if adopted would, in extension of its wide scope, replace the existing fragmented personal laws that are based on the religious scriptures and traditional customs of every major religious community of this country with a common set of laws that would govern every citizen, irrespective of their religion. Historically a national uniform code containing all criminal laws has been adopted;<sup>2</sup> however, the Legislation has failed to make the same efforts to codify all personal laws under an umbrella civil code.

The drafters of the Constitution had hoped that the Legislation would implement a UCC when the nation was ready to accept it. Recently, the Supreme Court of India has, on multiple occasions, opined the need for a UCC.<sup>3</sup> A UCC’s objective is to help achieve national

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<sup>1</sup> Students at O.P. Jindal Global Law School, Sonipat

<sup>2</sup> Code of Criminal Procedure 1973.

<sup>3</sup> See: *Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945; *Sarla Mudgal v. Union of India* AIR 1995 SC 1531; *Ms. Jordan Diengdeh vs S.S. Chopra* 1985 AIR 935.

integration and harmonise cultural diversity by tackling blatant and hidden discriminations, contained in the present disparate personal laws, against the marginalised and vulnerable groups of the society. However, after over 70 years from the inception of the Constitution, Goa is the only state that has been successful in implementing a uniform code that contains personal laws with an umbrella application over all religious communities in Goa. The incumbent Government, in its 2019 manifesto, declared its intention to work towards establishing a UCC. The authors of this paper aim to explore through the plethora of provisions advanced by the Goan Civil Code (GCC), in an attempt to elucidate the distinctive features of the GCC. The paper will inspect the effectiveness of such provisions and comment on whether they should be implemented at a national level. Lastly, the authors will comment on whether the Central Government should make the daring move to replace all existing personal laws with a national civil code modelled after the GCC.

## **INTRODUCTION**

In *Jose Paulo Coutinho v Maria Luiza Valentina Pereira*,<sup>4</sup> the court held that the Goan Civil Code (hereafter “GCC”) is “a shining example” of Indian democracy, iterating that a Uniform Civil Code is something that the country, as a whole, should be aspiring for. Despite the bold assertions of the Apex Court to aim towards constituting a Uniform Civil Code (hereafter “UCC”), people are riddled with doubts and apprehensions. All attempts towards a UCC have been met with protests. To date, only Goa has been successful in formulating an umbrella code that dictates all religions alike. Goa is governed by the Portuguese Civil Code, 1867,<sup>5</sup> and the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012.<sup>6</sup> However, in this paper, the researchers have limited the scope to the latter Code, which is a uniform code dealing with all laws related to succession and inheritance in Goa.

In a secular country like India, it appears difficult to implement the UCC. In 2018, the Law Commission of India claimed that a UCC is “neither necessary nor desirable at this stage”.<sup>7</sup> The Law Commission pointed out that preserving the diversity of personal laws is

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<sup>4</sup> *Jose Paulo Coutinho vs Maria Luiza Valentina Pereira*, (2019) SCC 1190.

<sup>5</sup> Portuguese Civil Code, 1867.

<sup>6</sup> The Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, No.23, Acts of Parliament, 2016 (India).

<sup>7</sup> Ministry of law and Justice, *Consultation paper on Reforms of Family Law*, LAW COMMISSION OF INDIA, 10,1 (Aug 31, 2018), <https://lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf>.

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ideal as long as the Legislature ensures that those laws do not impugn the fundamental rights provided by the Indian Constitution. The Commission emphasized that all inequalities in the personal laws should be amended. Various aspects of the prevailing personal laws de-privilege women, and thus, it is discrimination and not the difference that lies at the root of inequality.<sup>8</sup> In its consultation paper, the Commission chose to deal with provisions in the personal laws which are discriminatory and proposed amendments. The Commission elucidates that the primary motive should be to first establish “equality within each community” rather than “equality between different communities”.<sup>9</sup> For a just law, freedom of religion should be complemented by the right to equality.

In this paper the researchers try to highlight some progressive and shining features of the GCC which can serve as cues for our central government and lead them on a path or at least it is hoped, to better the laws currently governing succession in our country, without overthrowing the existing personal laws.

### **DISTINCTIVE FEATURES OF THE CODE**

The Goa Succession, Special Notaries and Inventory Proceedings Act, 2012<sup>10</sup> (hereinafter “the Code”) is a Uniform Civil Code governing the principles of Succession and Inventory Proceedings in Goa. This is a State Statute, and it differs from the three central statutes (the Hindu Succession Act, 1956,<sup>11</sup> the Indian Succession Act, 1925,<sup>12</sup> and the Muslim Personal Law (Shariah) Application Act, 1937<sup>13</sup>) in various ways. The most striking characteristic of the Code is that, unlike other provisional laws, it uses gender-neutral terms like “ascendants”, “descendants”, and “surviving spouse”, thereby reducing the problem of gender discrimination between male and female. Other distinctive features of the Code are as follows:

The Hindu Succession Act (hereinafter “the HSA”) provides different succession scheme for properties owned by males and those owned by females; Section 8<sup>14</sup> provides the

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, No.23, Acts of Parliament, 2016 (India).

<sup>11</sup> Hindu Succession Act, 1956, No.30, Acts of Parliament,1956 (India).

<sup>12</sup> Indian succession Act, 1925, No.39, Acts of Parliament,1925 (India).

<sup>13</sup> the Muslim Personal Law (Shariah) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

<sup>14</sup> Hindu Succession Act, 1956, §8, No.30, Acts of Parliament,1956 (India).

order in which a property of a male Hindu devolves, and Section 15<sup>15</sup> provides the order in which the property of a female Hindu devolves. Whereas the Code provides a common order of succession in the event of death of a male or a female.

Further, Section 52<sup>16</sup> of the Code states that when a male or female dies, his or her property, firstly devolves on to his/her descendants and their descendants; and in the absence of the descendants, to the ascendants; and in the absence of the ascendants, to the brothers and their descendants; and in absence of any brothers and their descendants, to the surviving spouse; and in his/her absence to the sister and other 'collaterals' up to six degrees; and lastly to the state. Evidently, no one gender is preferred over the other, unlike in the HAS. Even the Muslim Personal Law provides that the share of heirs differs on basis of their gender. The scheme of succession appears to be gender-just in the Code; but one may argue about the distinction made between the siblings i.e., the brother and the sister, as they both are not placed on equal footing. However, the most likely reason for such distinction may possibly stem from the idea of patriliney, a concept that advances that after marriage, the sister is deemed to belong to her husband's family and not the family of her blood-relatives.

As discussed above, in Goa the provisions for devolution of property are gender-neutral; so, a women's property devolves in the same order as it would have, had a male member died. If a Goan female dies issueless, her property devolves upon her parents irrespective of where she inherited it from, similar to the instance of a Goan male's death.

However, in the Hindu law, if a female dies issueless, the property which she inherits from her husband or her father-in-law devolves upon the heirs of her husband and if she had inherited the said property from her mother/father, the property reverts to her father's heirs and not to her mother's heirs. Noticeably, the husband's natal family has a stronger claim over a female intestate's property than her own parents or siblings; her blood relations occupy a subservient placement in the order of succession when compared to the entire category of her husband's heirs (including his Class II heirs, agnates and cognates).<sup>17</sup> On the other hand, the scheme of succession codified in the HSA for a male intestate provides that the mother of a

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<sup>15</sup> Hindu Succession Act, 1956, §15, No.30, Acts of Parliament, 1956 (India).

<sup>16</sup> The Goa Succession, Special Notaries and Inventory Proceedings Act, 2012, §52, No.23, Acts of Goa State Legislature, 2016 (India).

<sup>17</sup>Rakesh Singh, *Rules regarding female Hindu Dying Intestate*, 1, [https://www.lkouniv.ac.in/site/writereaddata/siteContent/202003261537532631rksingh\\_female\\_succession\\_act.pdf](https://www.lkouniv.ac.in/site/writereaddata/siteContent/202003261537532631rksingh_female_succession_act.pdf)

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male intestate is a Class I heir,<sup>18</sup> and his wife's parents have not been placed anywhere in the order of succession. This striking disparity is unfair, discriminatory and may be traced back to the concept of a 'Hindu Undivided Family' (HUF), as per which a family tries to retain a property in the male lineage. Furthermore, in matters pertaining to Sunnis in the Muslim Personal Law, even though there are five primary heirs who always inherit the property in case any male or female dies, male descendants inherit more than the female descendants. So, the Code to an extent tries to curb the discriminatory problem of devolution of a deceased female's property as provided for in the Hindu and the Muslim Law.

Another unique feature of the Code is that it treats male and female heirs at par, i.e., the son and the daughter, the father and the mother, agnates, and cognates irrespective of their sex, age, or caste are treated in the same manner. In all other central laws, there is an anomaly with respect to the share of the ascendants of different genders, as they do not place them on equal footing. As stated above, in the scheme of the succession of a deceased Hindu male's property, his mother is recognised as a Class I heir and thus, has a stronger claim than his father who is categorized as a Class II heir. The father's claim is situated as such that he inherits his deceased son's property as a whole or he inherits nothing.<sup>19</sup> The Law Commission of India, in its 204<sup>th</sup> Report,<sup>20</sup> suggested relocating the position of the father from a Class II heir to a Class I heir. Even the descendants of a pre-deceased male's pre-deceased sons, extending to the third degree, find a place in the Class I category, but the father does not. In the Indian Succession Act (hereinafter "the ISA"), as per Section 42,<sup>21</sup> as long as the father is alive, he excludes the mother from inheriting any share in the property of the deceased.<sup>22</sup> In the case of Muslims, the share of heirs are fixed but fluctuating so the share of the mother is fixed at one-sixth if there are ascendant or brother or sister of the deceased, and at one-third, if none of the children, father, brother, sister or spouse are alive; but if the spouse and the father are alive, then she only inherits one-third of the residue. It is noticeable that Muslim male always gets twice the share of

<sup>18</sup> Shahista Pathan, *Succession to property of a Hindu Male*, LEGAL SERVICE INDIA, (Jan.29, 2022,5:10 PM) <http://www.legalservicesindia.com/article/1002/succession-to-the-property-of-a-hindu-male.html>.

<sup>19</sup> Arpita Saha, *Intestate Succession: Devolution of Property after the Death of a Hindu Without A Will*, LEGAL SERVICE INDIA, (Jan.27, 2022, 12:10 PM) <http://www.legalserviceindia.com/article/1258-Intestate-Succession.html>.

<sup>20</sup> Law Commission of India, *Proposal to Amend the Hindu Succession Act, 1956 as amended by Act 39 of 2005*, (2008), <https://lawcommissionofindia.nic.in/reports/report204.pdf>.

<sup>21</sup> Indian succession Act, 1925, §8, No.39, Acts of Parliament,1925 (India)

<sup>22</sup> Jasvir, *A Comparative Study of the General Provision of Indian Succession Act, 1925 and The Hindu Succession Act of, 1956*, 6 ISSN 102, 108 (2015), [https://www.academia.edu/19721880/A\\_Comparative\\_Study\\_of\\_the\\_General\\_Provision\\_of\\_Indian\\_Succession\\_Act\\_1925\\_and\\_The\\_Hindu\\_Succession\\_Act\\_of\\_1956](https://www.academia.edu/19721880/A_Comparative_Study_of_the_General_Provision_of_Indian_Succession_Act_1925_and_The_Hindu_Succession_Act_of_1956).

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the Muslim female.

Commendably, in the Code, both agnate and cognates are under the category of collateral and the recognition is up to six degrees only. This is in clear contrast with the Hindu law, wherein agnates are preferred over the cognates, and inheritance rights of succession are conferred on all the blood relatives of the intestates irrespective of their degrees of relations with the intestate.<sup>23</sup> Additionally, in the case of the Parsis, succession rights are recognized till unlimited degrees of relationship. Even for Sunni Muslims, the male agnates of the deceased are in the second category i.e., the residuary, and the descendants of a deceased Sunni's daughter are classified as 'distant kindred', which means that their right to inheritance only arises in case there are no sharers or residuary. Most of those categorised as distant kindred in Sunni law relate to the deceased from his female descendants or other female relatives.<sup>24</sup>

A distinguishing feature of the Code is that it accommodates a provision for 'communion of assets'; as per which, prior to marriage both the spouses are supposed to enter in an ante nuptial contract, to bring together their properties (assets) and liabilities which they inherit during the subsistence of their marriage. This contract affects the succession laws as well. When one spouse dies, the surviving spouse (husband or wife) becomes intrinsically entitled to one half of the total property of the deceased and the other half devolves by way of succession. Due to this reason, the surviving spouse appears at the fourth degree of succession in the Goan law, since he/she automatically inherits half the property of the deceased, as he/she is contractually entitled to.

Moreover, the Code provides that as long as the descendants of the deceased (both the son and the daughter and their respective children) are present, they inherit all the assets of the deceased in its entirety, excluding the other remote relations. This prevents a dilution of shares in the property. In contrast to this, as stated above, in Muslim law there are 5 primary heirs (the spouse relict, both the parents and the son and the daughter), and they inherit the deceased's assets together in all circumstances, and even though their shares are statutorily fixed, it fluctuates in different circumstances, usually never in the favor of the females. In Hindu law, in the case of a deceased male, his property devolves to the mother, wife, and the children per

<sup>23</sup> POONAM PRADHAN SAXENA, FAMILY LAW 540 (LexisNexis).

<sup>24</sup> Shahbaz Ahmad Cheema, *Shia and Sunni Laws of Inheritance: A Comparative Analysis* Vol 10 Pakistan Journal of Islamic Research 71, 72 (2012), <https://www.bzu.edu.pk/PJIR/vol10/eng%206%20Shahbaz%20Cheema%2004-11-13.pdf>.

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capita, as they are all categorized as Class I heirs.

Another point of distinction is that the Code contains no indications that full-blood relations exclude half-blood or uterine blood relations entirely from the order of succession; though, the share of the latter is half of that of the former. Additionally, half-blood relations are treated at par with uterine blood relations as per the Code. On the contrary, section 18<sup>25</sup> of the HSA, states that full-blood relations exclude half-blood relations, and the latter excludes the uterine blood relations from the scheme of succession. Furthermore, in Muslim law, a consanguine (half-blood) sister is excluded from inheritance in case a full-blood brother or sister or a consanguine brother is present. As for the Parsis, a full-blood brother or sister exclude half-blood relations completely from inheritance.

Lastly, in Goa, an estate leaver can only dispose of half his estate through a will; this means that he/she cannot completely disinherit a rightful heir. However, in the HSA and the ISA, there is no such expressed restriction. Interestingly, the Muslim law allows only one-third of the property to be willed, but scholars deem this restriction to be a little too limiting.

### **UNIFORMITY DOES NOT EQUAL “EQUALITY”: LACUNAE IN THE GCC**

Various progressive provisions in the GCC surpass any other provision in positioning every citizen at an equal stand; however, the Code is not as successful as one might perceive. As Albertina Almeida, a lawyer- activist, states:

“The way the word ‘uniform civil Code’ is bandied around, it presents a chimera of uniformity being equated with equality. Laws can be uniformly applicable to all in respecting women’s rights, and they can also be uniformly applicable to all communities in disregarding women’s rights. In other words, they can also be uniform in discrimination. That is also a lesson to draw from Goa’s Family Laws.”<sup>26</sup>

The highlight of the succession laws in the Code is its noteworthy endeavor to treat men and women equally. Stemming from which, the Code contains provisions for, inter alia, an equal division of property between a husband and a wife. This prevents the husband, or his children in case of his death, from selling the property without the prior consent of the wife.

<sup>25</sup> Hindu Succession Act, 1956, §18, No.30, Acts of Parliament, 1956 (India).

<sup>26</sup> Albertina Almeida, *Goa's Civil Code Shows That Uniformity Does Not Always Mean Equality*, THE WIRE (Aug. 8, 2016), <https://thewire.in/law/goas-uniform-civil-Code-is-not-the-greatest-model-to-follow>.

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These provisions were created with the legislative intent to protect women; that being said, these provisions are not bereft of loopholes. Almeida accentuates that the Goan law distinguishes between ownership and control.<sup>27</sup> Owing to this dichotomy, the husband has been given the *carte blanche* to control, manage and administer the properties belonging to the couple, including the properties belonging exclusively to the wife.<sup>28</sup> This means that these provisions may *prima facie* appear to promote equality by entitling both men and women to own and share properties equally between themselves, however, their undertone fosters inequality as the management of the said properties is deemed to be the prerogative of the husband. This gives an undue advantage to the husband, who can for instance, in a cooperative society, transfer his shares or rent out the property, without the prior consent of his wife, and he will not be breaking any law. And, since this is a uniform law, the law hands the control button solely to the men of all religions and communities.

Another drawback of the Code is that it categorises the husband and wife at a very low position in the order of succession, due to the provisions for the communion of assets, as discussed above. They are placed after the children, the husband's parents, and his siblings. This may seem fair and just at first glance since both men and women have an equal footing. However, the practical implications of this provision affect women and men disproportionately. In a patriarchal society, this provision can deeply endanger a widow's rights, especially if she had waived her rights to her husband's property in a pre-nuptial agreement (which is a common practice). The GCC recognises pre-nuptial agreements, in which the property holding rights and entitlements of the parties entering the agreement can be modified or restricted. This opens up a disarray of problems, as women are forced to sign pre-nuptials that go against their well-being, either by coercion or fraudulently.<sup>29</sup>

Similarly, the Code is lauded for the provision of equal inheritance by daughters and sons, on the death of one of their parents. Unfortunately, this is evaded in praxis, by many families. In practice, the property rights advanced by the Code are limited to exist on paper only. Shaila de Souza, the head of the 'Centre for Women's Studies' at the Goa University, notes that,

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<sup>27</sup> *Id.* at 20.

<sup>28</sup> *Id.* at 20.

<sup>29</sup> Nabeela Jamil, *Is Goa Civil Code the Answer to India's Sexist Laws*, FEMINISM IN INDIA (Nov. 9, 2018), <https://feminisminindia.com/2018/11/09/goa-civil-Code/>.



“Very often, daughters get a certain amount of gold at the time of their marriage and are asked to sign off their rights to the family property..... It is not common that daughters fight for their share of the parental property and if there are such cases invariably it will be because of an informed son-in-law who wishes to claim his share.”<sup>30</sup>

Not unlike the other states of the country, the iron fist of Goa’s patriarchal society, very often shackles women from exercising their rights over property, whether it is the rights sought by daughters/sisters or those sought by wives.<sup>31</sup> For instance, women are constantly manipulated by their brothers to relinquish their rights over their patrilineal property; meanwhile, their husbands push them to accept the inheritance to claim their own share in it. This creates new grounds of conflict within the family and puts women in very vulnerable positions. Further, for instance, if a woman has been manipulated to relinquish her shares in the parental property, and her marital family does not own any property, then in the event of her husband’s death, in the presence of descendants, ascendants, and the sibling of her husband, she is per chance left with nothing.

Moreover, an equal share in the property, for most women, unfortunately, has only meant equal liabilities. For instance, if a man uses a property, shared by him and his wife, as security for a loan or to pay off a debt, in the event of his death, his wife is left with the burden to pay off the loan or the debt which she may not have even known about. Additionally, a woman can reap benefits of equal share in the matrimonial property only if there exists a matrimonial property, to begin with. To elucidate, a woman whose husband does not own any property, when widowed, would get half of nothing. Similarly, if a couple does not own property, and has been living as tenants, at the death of the husband, the wife does not get 50% of the tenurial interests.

Almeida in her article in *The Wire* advocates that the “imposition of uniformity amongst unequal can create inequality”.<sup>32</sup> For instance, the intent of the Sixth Schedule<sup>33</sup> of the Constitution of India, 1950 is to extend protection to the states of Assam, Nagaland, Mizoram, Andhra Pradesh, and Goa with reference to their family laws. In light of this, if a UCC was to be enforced nation-wide, it would destroy the cultural diversity of these states and in turn,

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<sup>30</sup> *Id.* at 23.

<sup>31</sup> Namita Kohli, *All in the family: Goa Civil Code a model for the rest of the country*, HT (Sep. 13, 2016), <https://www.hindustantimes.com/india-news/all-in-the-family-is-the-go-civil-code-a-model-for-the-rest-of-the-country/story-4ImvwP0OrAST2hUnsZxtiL.html>.

<sup>32</sup> Almeida, *supra* note 9.

<sup>33</sup> IND CONST. VI Schedule.

threaten the territorial integrity of the nation.<sup>34</sup> The authors of this paper believe that a united nation does not necessarily need to have uniformity in diversity.

## **DISSENTING VIEW: GOAN NATIONALIST AGENDA SHAPE THE TRAJECTORY OF THE GCC**

There are numerous activists that do not agree with the GCC being an example for the UCC that should be enforced upon the whole nation. Some scholars believe that the GCC is in fact a tool for preserving the iron fist privilege of the dominant communities of Goa, such as the Hindu males. They propound that this ulterior motive has prevented the Goan Legislation from making any improvements in the Goan personal laws, even though some of the ‘uniform’ provisions of the Code understatedly relegate women and certain other sections of the society by denying them equality.<sup>35</sup>

The Goans consider GCC to be the element that distinguishes them from the rest of India, and thus, in their opinion, it makes them ‘better’ than every other state of India. Activists like Almeida believe that this flow of thought prevents the Goan Legislation from changing the personal laws, including provisions that unjustly violate equality.<sup>36</sup> Almeida has boldly iterated that this kind of “nationalist sentiments for ‘uniformity’, that is, retaining privilege, can trump rights of substantive equality, guaranteed by the Constitution of India”.<sup>37</sup> The authors agree with this view and believe that this should not be the precedential motive that the rest of the country is bound by.

## **CONCLUSION**

A study of the succession laws of Goa reveals that on one hand, Goa has been successful in providing equal rights to men and women alike, at least on paper, without hurting the sentiments of any religion or any particular section of the society; on the other hand, it is essential to acknowledge that while the Goan Code may extend more statutory legal protection towards women than any other personal law does in India, it should not be intrinsically construed that implementation of law in Goa is better than the implementation of law in the rest of the country.

The authors submit that while overthrowing all personal laws to replace it with a Code that

<sup>34</sup> Ministry of Law and Justice, *supra* note 2, at 9.

<sup>35</sup> Almeida, *supra* note 9.

<sup>36</sup> Almeida, *supra* note 9.

<sup>37</sup> Almeida, *supra* note 9.

replicates the GCC will not be sensible, changes need to be made in the current personal laws and to that extent, the Central government can refer to the GCC. The authors further propose that instead of looking at the GCC as an 'example', the Government of India may deem it as a live experiment and, in turn, benefit from the findings of the experiment by assessing the areas where the Code shines and works and the areas where it does not. It is possible that the GCC may be faulty and may be cherished by the Goans for the wrong reason, however, it cannot be denied that it sets all communities that discriminate against minorities in the name of religion, straight.



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