

# LAW COMMISSIONS OF INDIA AND GOA LAW COMMISSIONS: FRAMING THE ABSENCES OF REGIONAL DIFFERENCE WITH SPECIAL REFERENCE TO GOA

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*This article examines how law reform processes in India have been unsuccessful in taking into account intersectionality, particularly in the context of Goa. It analyses how the existence of a Uniform Civil Code, a relic of the era of Portuguese colonialism, has been utilized by law reform processes to absolve themselves of responsibility for modernizing civil laws, particularly for women. The article breaks down the idea of an “Indian” identity, highlighting its failure to account for diversity in gender, caste, wealth and the unique challenges faced by a community that is at once isolated from India but also subsumed by this identity. Accounting for the failings of even institutional mechanisms such as the Law Commission of India to take cognizance of the needs of Goa and the lack of incentive for politicians to do so suo motu, this article calls for a relook at the identity through which laws are reviewed, as well as a more participative and inclusive look at the legislative changes required in Goa.*

## I. INTRODUCTION - INTERROGATING HEGEMONIC LAW REFORM PROCESSES

There is a certain hegemony at play when law reforms endeavour to, or when Law Commissions meant for law reforms are guided by the forces of globalization in tandem with nationalism and predicate their inquiries and hearings on a monolithic “reasonable woman” when it comes to gender specific issues, and on a monolithic “reasonable Indian” (or for that matter “Goan”) when it comes to any issue, completely bypassing the specificities arising out of the idea and existence of Goa, its land and its peoples, and particularly its women. Casteism, class, ableism, heterosexism, geography, sexism, and various

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other axes intersect and shape the trajectories of law reform and Goa, as a case study, can afford a vivid example of how these trajectories are determined.

This paper draws from the feminist experiences of engaging with women and law reform processes simultaneously, where the writer has herself, in many cases, been a participant. It seeks to grapple with the challenges for law reform in the context of a panorama of concerns that present themselves in a small state like Goa which is located in the federal setting of India and is better known as a tourism destination and a “forward” State. Various threads have been identified that weave feminist engagement with law reform. That feminist engagement may be as Goans, as women’s activists, as working class women in Goa, as human rights activists, as Goan Dalit women, as members of government constituted Family Law Review Committees, as feminists engaging with other feminists across different repressed sections across India, across different repressed sections across Africa and across different repressed sections across the globe – expectedly an interplay of various feminist identities.

Law reforms call for bottom up processes facilitated by empirical work and purposive research. That is a lesson from feminism and the feminist method. So, how can law reformers be held accountable to the principle of substantive equality in the Indian Constitution that sees matters including “home”, “family”, “community”, “land”, “asset”, “property”, “culture” and “history” as political constructs and takes different meanings in relatively different historical and geographical contexts? In other words, how can law reform be accountable to the principle of substantive equality that would recognize the differences in the diverse geographies, histories, and genealogies and assign weightage in inverse proportion to the weightage of these in the scale of structural power? Multiculturalism requires that law reform encourages pluralism, albeit not in a benign way. Yet, how do we ensure that law reform does not also turn into simply an additive framework through add-women, add-geography, add-history, add-caste approach, without being substantively plural? How do law reforms ensure that we do not have a skewed federalism?

## II. THE GOA CONTEXT - GOA’S HISTORY OF LAW

Goa has politically been a part of India since 20<sup>th</sup> December, 1961. But in terms of the set of laws that comes to be regarded as family law, the civil status of a Goan woman is different from the civil status of a woman who is an Indian but not Goan. So, although Goa is now politically a part of India, for the purposes of family law, the rest of India is foreign territory in relation to Goa. This comes from the unique position of Goa as a former Portuguese colony.

The Portuguese had a Portuguese Civil Code, a Portuguese Civil Procedure Code, a Portuguese Code of Civil Registration, a Portuguese

Commercial Code and a Portuguese Criminal Code. Life in Portugal and its colonies was to be legally regulated by the above Codes. Even during the Portuguese rule, these Codes were not without implications for land rights. For instance, women who were widowed and led an isolated existence while also being lined up for tonsuring of their heads as per the local custom, were often even induced to enter a liberated world through conversion, with the promise of not having to tonsure their heads, and with land rights.

However, it is to be remembered that the Portuguese Civil Code (Code) is a Code of 1867, and what is now Goa was colonized by the Portuguese from 1498 in bits and parts from different kingdoms and small feudatories. It is only under the Portuguese rule and the administration of the *Estado da Índia Portuguesa*, albeit for different periods of time, that these various territories and peoples were brought within a single political, social and economic entity that came to be called Goa. This marks a distinct political history from that of formerly British India. To that extent, a different socio-political economic culture evolved in Goa, and consequently also a different legal culture.

The Portuguese Civil Code of 1867 has since been amended several times, with very significant changes made in 1966. However, the version of the Code as amended in 1936 along with the amendments consequent to the Concordata (a treaty between Portugal and the Holy See) in 1940 are the legal foundations for what are called the Family Laws of Goa today. By a Regulation for its administration after it was integrated into India, i.e. the Goa, Daman and Diu Administration Act, 1962, the Parliament extended most of the Central laws prevalent in the rest of India pre-1961 to Goa, but did not extend some laws and maintained that only those provisions of the Portuguese laws, on subjects which were not extended from India, or on subjects not covered by the laws of India, would be retained. Thus, it was that the various family laws - what are often referred to as personal laws - were not extended to Goa from the rest of India, and consequently those portions of the Portuguese Civil Code which related to Family laws were treated as retained. It was primarily a kind of residual provision and there was no special notification as to which laws were retained.

### III. THE MARKERS OF DIFFERENCE OF GOA

Among the more obvious markers of difference from the rest of India, apart from the family laws, are the possibilities for a Goan to secure Portuguese Citizenship and acquire a Portuguese Passport, a code of village community, a dominant tourism industry, and a port area that has been an open invitation (but unfortunately also an open sesame for destruction) to Goa for trade and commerce. Its maritime history, the understandings of international law, and the predatory ground for forces of globalization enmeshing as well as they did with forces of casteism and regionalism, also form part of the

ambience of Goa's unique history and trajectory of reform (to the extent that there was reform).

#### IV. THE FAILURE OF LAW REFORM - A FEMINIST APPRAISAL

Law reform, both in India and Goa, has pronouncedly failed to speak to the specific concerns of Goa and its diverse women. Moreover, Goa's trysts with law are not factored in while drawing the Indian law reform picture. Local issues such as the demand for a special status for Goa, the demographic politics of size-small Goa, the implications of the legal option of Portuguese citizenship, the implications and experience of the Uniform Civil Code steadily prevalent in Goa, the non-extension/applicability of certain national laws to Goa/Goans, and the non-synchronisation of family laws with the related sites for legally processing the rights, such as banks and the newer forms of property or the newer locations of property not covered under the family law especially when it comes to matrimonial property rights, get short shrift at the level of the Law Commission of India. Also, the different laws in Goa are only superficially noted by the Law Commission of India and the experiences of women in Goa in regard to these different laws are rarely factored in the analyses and recommendations made.

For instance, if one were to understand the discussion on the Uniform Civil Code, it would be absurd to view the reactions/responses in Goa from the kind of "national" prism that they are presently viewed. Goa has a Portuguese Civil Code applicable to its citizens and also in some ways a Uniform Civil Code whose totality may be questioned. This is as opposed to the personal laws (different laws for different communities) applicable in the rest of India. If one conducts interviews with persons who have lived the experiences of the family laws applicable to Goa, or who have worked with women who have lived these experiences, some of the concerns that come to surface are whether the laws are really as uniform as they are made out to be and whether uniformity necessarily translates into equality, considering that there can also be uniformity in discrimination.

On the other hand, with the Law Commissions in Goa, Goa being at this point a semi-feudal and a semi-global capitalist state with internal contradictions arising from the co-existence of feudalism and global capital, there are opportunities for factoring gender-specific concerns and engendering interventions through law. But these are not seized, because of the overarching patriarchal and quaintly (Goan-quaint) nationalist frameworks within which the Law Commission of Goa operates. Hence, gender is hardly the lens through which the local laws are reviewed, or new laws, in keeping with evolution, are introduced, as will be explained in the following parts of the paper.

A feminist analysis brings into sharp focus the roots of the failure in the very construction of the nation state as a monolithic India or Goa, which the Law Commissions of India or Goa must first recognize to envision genuine reform. It comes across that the patriarchal project and the nationalist project collide to bring about a hegemonic gaze on women in Goa, both because of the latter's gender and despite it. When law reforms are being envisioned and crafted in India, the reference point for these law reforms is the upper caste North Indian male, or a relatively newer persona called the global corporate, whose life has little resemblance with the common woman in Goa. When law reforms are being crafted in Goa, the reference point, again, is the upper caste Goan male or a persona called the transnational corporate, whose life bears little resemblance with the life of the common woman in Goa. Thus, both the Goan and the Indian nationalism together potently combine in reconfiguring patriarchy.

Hence, a feminist appraisal of law reform in India or Goa would be incomplete without a critique of nationalism and the construction of the nation State that is tone-setting in the envisioning of law reform. The perspective of the sub-altern reminds us that the critique of the nation-state as such must also be located in the context of specific histories and viewed in relation to the alternative (local, community) structures of regulation and rule.<sup>1</sup> Feminists in South Asia have interrogated the imperatives of the post-colonial nation-states<sup>2</sup>. Such studies are the door for a critical understanding of the post-colonial Indian state with its diversity and the differing locations of the people within that geography. However, the differing locations are also today defined by geography as it has emerged and evolved. There is a geographical Goa today that has to be appreciated with certain commonalities shaped by its history, even as the geographies within Goa have to be interrogated. Hence, it is not useful to completely discard the legitimate imperatives of territorial formations, though it is necessary to continue interrogating a monolithisation of geography or presentation of a particular geography as one bland whole. The lacuna resides also in the perception of the post-colonial Indian state as the post-British colonial state, even in the feminist critiques. Incidentally, Duncan Derrett<sup>3</sup> has alluded to this incompleteness of the study of India when we restrict our gaze by looking at India as one of the British Empire states.

Feminist consciousness of the limitations of the progressive laws in the books as not being backed up by implementation or by the judgments of an enlightened judiciary has grown acute.<sup>4</sup> But the experience from implementation of the progressive laws or judgments seems to be providing too small a

<sup>1</sup> RAJESWARI SUNDER RAJAN, *THE SCANDAL OF THE STATE: WOMEN, LAW, AND CITIZENSHIP IN POSTCOLONIAL INDIA*, (2003).

<sup>2</sup> Uma Chakravarti, *Archiving the Nation-State in Feminist Praxis: A South Asian Perspective*, Occasional Paper No. 51, Centre for Women's Development Studies, Delhi, (2008).

<sup>3</sup> JOHN DUNCAN MARTIN DERRETT, *ESSAYS IN CLASSICAL AND MODERN HINDU LAW* (1977).

<sup>4</sup> *Supra* note 1.

sample to build what the Central law reforms initiatives would consider a critical mass in fathoming the implications of a law, rich as the experiences of Goa maybe. In that sense, the size of Goa also matters in addition to the perceptions of it as a historical or cultural aberration. It might be pertinent to note that personal laws are crafted basically for Hindus and non-Hindus in India and for Catholics and non-Catholics in Goa.

It appears that the exclusions on various counts including being minorities are a sub-text in law reform the world over. Speaking of the United States of the late twentieth century, Lawrence Friedman writes:

*“The Constitution and public opinion, allowed people to exercise their religions freely. But toleration is not the same thing as partnership. The public, official culture was drenched with the spirit and the substance of Protestant Christianity. The schools were so partisan, so Protestant, that Catholics felt obliged to set up their own school systems. Most Americans took it for granted that public life did and should reflect the values of the majority. Other people were, so to speak, guests in a house they did not own”.*<sup>5</sup>

Hence, he emphasized on an even more pressing need for reinforcing and heightening the practice of,

*“creative revisionism in which the de-systematization of a narrowly defined and demarcated “cartographic” space allows for a culturally and historically located critique of colonial discourse while, at the same time producing the momentum for a projection and exploration of “new territories” outlawed or neglected by dominant discourses which previously operated in the colonial, but continue to operate in the modified or transposed forms in the post-colonial culture”.*<sup>6</sup>

As “in bringing the ‘margins’ into account, we necessarily challenge a map which has kept them so far from sight”, “once, as feminists, we begin to examine the margins and challenge the paucity of traditional mapping, we render visible this dangerous terrain which not only exposes and challenges ‘the law’ but equally exposes and challenges the practices of ‘mapping law’<sup>7</sup> within the dominant law reform scheme.

<sup>5</sup> Lawrence M. Friedman, *Family Law in Context*, in PRIVATE LIVES FAMILY, INDIVIDUALS AND THE LAW (2004).

<sup>6</sup> See Graham Huggan, *Decolonizing the Map: Post-Colonialism, Post-Structuralism and the Cartographic Connection*, in ARIEL 20.4 115-131 (1989).

<sup>7</sup> Anne Bottomley and Hilary Lim, *Feminist Perambulations: Taking the Law for a Walk in Land*, in FEMINIST PERSPECTIVES ON LAND LAW (Bottomley ed., 2007).

## A. The Law Commission of India and the ‘Indian’ Referent for Law Reform

Consecutive National Law Commissions have failed to see the intersections of geography and history with gender. They do not follow a method that will identify and draw from these varied experiences to weave the law reforms of a vast and diverse country such as India.

Goa missed the bus as regards the first Law Commission of India tenuring from 1955-1958 which produced reports, among other things, on the proposal that High Courts should sit in benches at different places in a State and on the Income Tax Act, 1922. By the time Goa was integrated into India in 1961; the Third Law Commission was set up by the Government of India and was running under the Chairmanship of Justice J.L. Kapur. It seems sometimes that the absences related to Goa are partly connected in a way with the lack of Goa’s presence in India at the tone-setting stage of the Law Commission of India. However, that is not all of the reason.

There is a need to understand that the very processes of law reform in India must defy one definition when there are states that are at different junctures of history and have different geographies. Apart from the fact that Goa also has common features with the rest of India, such as the caste system, and with the rest of the world, such as, for instance, class-based exploitation or a discriminatory gaze at people with a different sexual orientation, is there a place for multicultural feminism that is at once anti-casteist and challenges a nationalism that is constructed around the monolith of an upper caste Hindu man from core North and Central India and his expectations of various women? Or for multiculturalism that challenges a nationalism that is constructed around the exoticisation of a certain population, to walk hand in hand with globalization to reconfigure patriarchy?

Will the Law Commission of India stop following the heels of a trajectory that by its commission and omission affirms the stereotypical gaze of the nation towards Goa as a pleasure-periphery and towards its people as banana people who sing and dance and do nothing else, and therefore, by implication, cast Goa outside the gaze of the rule of law? Will Law Commissions recognize that this pleasure periphery gaze is the kind of gaze that defines or omits to acknowledge local concerns and sweeps the concerns under the carpet of beach sand or behind the skyline of the “beautiful scenic Goa”? At a time when globalization (and monoculturalism) is the primary economic and cultural practice to capture and hold hostage the material resources and economic and political choices of vast numbers of the world’s population, what are the concrete challenges for feminists of varied genealogies working together to ensure that their shared humanity does not get “savagely challenged when

their differences are narrowed into one devised system of uniquely powerful categorization?”<sup>89</sup>

Let us take a look at the tenor of omission and commission of the Law Commission of India vis-à-vis Goa. Take the case of the absence of the Law Commission of India in the discourse regarding the strongly articulated demand in Goa for special status. The question is whether Goa should have a special status and if it should, what should be the nature of that special status? Securing a special status now becomes a part of the promises made at election time. It becomes a convenient excuse to lay the buck at the feet of the Centre, if the party in power there is different from the party in power in Goa. But when the parties in power at the Centre and at the local level are in alignment, as it is now, the clinical answer is that special status is not possible. Just who decides whether special status is required or not and whether or not it is possible within the framework of the Constitution of India? What would be the questions framed for taking a call on this issue? What are the implications of such a special status for the citizenship of women? One would have thought this merited a reference to the Law Commission of India, but alas, no step was taken in this regard. The demand for special status is thus, merely set apart as “not possible” because the Centre says so.

Successive National Family Health Survey Reports have pronounced that Goan fertility levels have reached below replacement levels. On the other hand, there has been substantial in-migration. One has to understand the politics in Goa in the face of the demography of Goa. It can be seen that a substantial population in Goa today is not Goan by origin. There have been and there can be endless discussions on who is a Goan and who is not. But all the same, one has to appreciate the context in which people in Goa are feeling threatened and overwhelmed by a/other population/s. There are issues of how they miss the tree for the woods and misfire by seeking to address this concern by advocating or decreeing for instance, at village gram sabha meetings that “Biharis will not be allowed in the village”, or otherwise that all non-Goans will be chased out. There is a context to the sons of the soil movement, there is a context to the movement demanding a special status for Goa, and unless there is some reading on the historical and socio-political context, or the Law Commission elicits historicized accounts, it would be difficult for law reformers (*read* Law Commissions) to grasp the tenor of what is going on and take a call.

Ironically, in the Law Commission of India’s 107<sup>th</sup> Report on the Law of Citizenship, there is not even a whisper about the peculiarities that present themselves regarding the citizenship of Goans-including the more glaring

<sup>8</sup> See Chandra Talpade Mohanty, *Decolonizing Theory Practicing Solidarity*, in *FEMINISM WITHOUT BORDERS* (2003) (For a discussion on feminist challenges in the context of globalization and identity politics).

<sup>9</sup> Amartya Sen, *What Clash of Civilisations?* SLATE, March 29, 2006.



complexities in the field of private international law at a time when there is much mobility of Goan women into other parts of India and the world in connection with work, and the marriage of Goan women to persons from other parts of India or the world, and the consequent confusion about which laws apply. Neither did the Seventh Law Commission, dwelling as it did on the Married Women's Property Act, think it fit to consult a law that already deals with the concept of married women's property. There is a prevailing sense that majoritarian considerations seize the mind of the Law Commission of India whether the matters are taken up *suo motu*, at the instance of the Government, or through references by Courts.

Goa does not, as a matter of fact, fit into the imagination of India's Law Commission as regards 'India'. So, for instance, if references are made to Goa in the Reports, they are made completely out of the situation's context in Goa and only by referring to the letter of the law –not even appropriately to the spirit of the law, and not taking into account the experience of the law. Thus, the 90<sup>th</sup> Report of the Law Commission of India, on the ground of divorce amongst Christians in India, makes an oblique reference to Goan laws, in terms of the demand (made by Catholics in India and the acquiescence of the Church establishment) for the Church annulment to be recognized by civil law, saying that this is the case in Goa, without seeking out any report about the experience of women in this exercise, and leaving the issue at bay when it came to the conclusion of the Report. What is also an endemic problem with a small place like Goa, is that it has satellite, strong dominant diasporic personalities who are iconised as the representative voices of Goans, as can be seen from the quotes of iconic diasporic Goans, in that Report.

On the other hand, there is a complete erasure or ignoring of constant local voices questioning consequential loss of economic rights due to civil law recognition of church decisions on annulment, that are based on canon law where the grounds for annulment are not at all the same as the grounds for annulment or divorce in civil family law.

Being a poster state of globalization, Goa has the potential to make a contribution far beyond its size in mapping what globalization can hold in store, and how margins are either solidified or redefined and remapped through land law and land planning exercises. The overarching globalization and neo-colonization of Goa through tourism meant that women's groups in Goa had issues like questioning the basis of the tourism industry, exposing its consequences and also grappling with them.<sup>10</sup> At the cost of repetition, one has

<sup>10</sup> This also meant that, for instance, *Bailancho Saad-Goa* (a women's collective), of which this writer used to be a part, would be raising issues about the establishment of the Kaiga Nuclear plant in neighbouring Goa, water protection, and the like. At the time - though maybe not as much now after the Koodankulam struggle - these were not considered to be women's issues that women's organizations should be taking up. But there were important issues that the women's group was raising, whether radiation respected political state boundaries such that

to state that the articulations of India are the articulations of its majorities; Goa and its realities do not seem to matter. The Law Commission of India, like the State, is embedded in the majoritarian ethic that will not take into account the experiences of a small population such as Goa. The right to information was raised in Goa long before it found political traction at the national level when Rajasthan got into the fray. Significantly, a critical issue from Goa, was about the right to information of corporates, who States actively partner with. This speaks about how the Indian population treats the Goan other, and is an important pointer to the need to historicize and reorganize the politics of solidarity- always not forgetting the core concerns from which this solidarity emerges, which can bring to bear on the Law Commissions.

Similarly, we need to repeatedly interrogate what gets absorbed into the “national” need for reform, be it through the Law Commission or otherwise. In the late 1980’s, long before the big dams, problems of mega-projects discourse seized the day, an immersion with the people living in the areas that were to be taken over for the Anjunem dam, brought some of us to an understanding that displacement has various dimensions apart from what would clinically be seen as displacement from land and dwelling. The women in the area who were into subsistence production on the small farm area that immediately surrounded their house or was in its closed proximity, were saying that they were offered corresponding areas of land and dwelling, but the land was rocky and the amenities were at a distance, thereby removing the function of production from the hands of women. There were scant openings to articulate this experience at the national level, even within feminist circles that were more preoccupied with issues of violence against women, including domestic violence and rape and saw such concerns as non-concerns. Thus, even the movement agendas were defined- and continue many a time to be defined- by those located in certain geographies. Much less could one have expected these agendas to be flagged as concerns before any Law Commission at that time, so that the continuing displacements could have been averted even in the rest of India. Today, the free prior and informed consent principle has entered the domain of Indian laws. But speaking from Goa, we may now want to talk of free prior and informed planning involving different women. We are already ahead because we already have grappled with the issue of free prior and informed consent, which can also take a turn of manufacturing consent. The land struggles and the struggles around Goa’s regional plan bring that realization. But would anyone in the corridors of law commissions or for that matter even ‘national’ women’s organizations, that have the power of ‘national’ to lobby with the Law Commissions, listen? How can these evolutionary

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the Goa Legislative Assembly should have had no say on the establishment of the plant just because it was in neighbouring Karnataka? This also applies to pollution by industrial units. Does merely its proposed location in the neighbouring administrative political unit determine who has a say as regards the location of such units? But where would one go to make out these cases?

experiences of various sections of people in Goa or women in Goa reflect in the Law Commission exercises locally or at the Centre? The Law Commissions usually prepare an a priori Report on a subject on which they choose or are expected to deliberate. The same is sent out to States for their feedback sometimes or perhaps always. But the frames are already determined. Drawing from the experiences of Goa, one would suggest that the law and the planning has the possibility of being much more vibrant, earthy and real when subjects for deliberation are chosen by inviting public suggestions and also determining the frames *after* public inputs.

## **B. The Law Commissions Of Goa And The ‘Goan’ Referent For Law Reform**

When it comes to the local Law Commissions, central to the dominant assertion of the idea of Goa is the ‘reasonable’ landed/ upper middle class man.<sup>11</sup>

Post 1961, by a Government Resolution dated 18<sup>th</sup> July, 1968, Goa set up its first own Law Commission which was supposed to compile the Portuguese legislation in force until then, so that it could be appropriately repealed, amended or retained by the Government of India or the Goa, Daman and Diu Government, as per reports, recommendations, suggestions and drafts of Bills. This was to ensure that there was reconciliation with the laws and legal systems of India. But the underlying inevitable was the expected ‘assimilation’ into India, while maintaining its unique identity that Nehru had assured as Goa/its territories were re-annexed. There was no statutory accountability to table the Law Commission Reports in the Assembly or to accept or reject the recommendations of the Law Commission with reasoning, and this lacuna continues to this date.

So when the first Goa Law Commission was set up in 1968, there were already four sets of laws in operation: a) all Indian laws that were enacted after 1961, b) those Indian laws that were enacted pre-1961 and were extended to Goa by the Goa, Daman and Diu (Laws) Regulation, 1962, and the Goa, Daman and Diu (Laws) Regulation, 1963, or by notifications issued by the Central Government from time to time, c) those Portuguese laws that were retained either consciously - as in the case of the portion of the Portuguese Civil Code relating to the Family laws - or stayed on the statute book as there was no corresponding Indian legislation on the subject or no corresponding provision on a particular aspect in the extended law, and d) laws that were enacted in Goa after 1961 but were sadly modelled on Indian laws without taking Goa’s specificities into account. The Goa, Daman and Diu

<sup>11</sup> Inspired by Usha Ramanathan, see Usha Ramanathan, *Reasonable Man, Reasonable Woman and Reasonable Expectations*, in *ENGENDERING LAW - ESSAYS IN HONOUR OF LOTIKA SARKAR* (1999).

Administration Act, 1962, had paved the way for this till a proper scrutiny of the Portuguese laws and the need or otherwise for repeal, or for amendment of those existing laws could be established. Accordingly, the Central Government, issued no notifications extending the various family laws, applicable to persons according to the religion they professed, to Goa. This meant that laws such as the Indian Succession Act, the Hindu Succession Act, the Hindu Marriage Act, the Hindu Minority and Guardianship Act, the Indian Christian Marriage Act, the Indian Divorce Act and the Shariat Act, were not extended to Goa. Hence, the family laws of Goa, which comprised of that portion of the Portuguese Civil Code of 1867, as amended up-to 1930, dealing with marriage, divorce, custody of children, guardianship, inheritance, succession, matrimonial property regimes, filiation, and the Decree dated 25<sup>th</sup> November, 1910 on the law of marriage, the Decree dated 25<sup>th</sup> November, 1910 on the protection of children and the Decree dated 3<sup>rd</sup> November, 1910 relating to divorce and the law relating to inventory (proceedings to establish succession and devolution of property) from the Portuguese Civil Procedure Code, were retained. There was no effort at the time to review the laws and the little window that was set up in 2002 by way of a Family Law Review Committee was also scuttled by the very nature of the construction of the process and by the convenient use of the critique of the process, as we will later see.

The first Goa Law Commission comprised of three men. The Chair was Mr. Gopal Apa Kamat who was then the Speaker of the Goa Legislative Assembly, the Law Secretary as ex-officio Member Secretary (who was an IAS officer from mainland India) and a third member who was to be appointed by the Chair who opted for a sitting District and Sessions Judge- Mr. Tito Menezes, who was later to become the Judicial Commissioner of Goa. The Commission was provided with an OSD (Officer on Special Duty) and the necessary staff and also a separate office.

The first challenge was one of the integration of the civil law system (that prevailed in Portugal and was applicable to its colonies, including Goa) into the common law system. It seems that this aspect was lost out with the complete imposition, all at once, of the common law system with no scope to weigh in on certain merits of the civil law system. There was also the fact that Portugal had a system of integration of international law into domestic law - the President of the Republic of Portugal would negotiate on conventions and treaties through his deputed plenipotentiaries and thereafter submit the same through the Central Government for approval and ratification by the National Assembly. This motif would be useful in this day and age, when Governments enter into agreements with other countries that can put at stake people and the rights of women in both the countries. So, for instance, no matter the pressures from pharma-companies of the US on India to water down its Intellectual Property Rights regime, in order to maximize their profits to the detriment of people to access those medicines, it would be useful to

have a protocol for Governments to place any Agreements for approval and ratification/rejection by the Parliament.

Then, there was also a comprehensive law on free legal aid, comprising free conduct of an action by an advocate and exemption of court fees. The culture of a smoothly functioning legal aid system under the present day Legal Services Authorities Act, from the point of view of allotment of lawyers to the deserving, is probably derived from this tradition.

Presently constituted local Law Commissions also have only men on them and oftentimes only men from certain communities, despite the conspicuous presence of voices pointing out the absences. It might be too remote for Goa to put a finger to what goes into the *hoopla* of choosing subjects for consideration of the law commission at the national level but easier to understand what goes into the hoopla at the local level. But proximity in a small state like Goa poses its own problems. At the end of the day, consecutive local law commissions are immersed in the locally dominant politics that define their agendas and also how the agendas are tackled. There can be a tendency with local law commissions to be parochial and conservative.

The Law Commission members are not elected representatives, no doubt. And we may not even agree on their recommendations. But surely it is the taxpayers' money and there must be some accountability and the average citizen must feel that her money has been well-spent. There is no statutory requirement for the Goa Law Commission Reports to be tabled in the Assembly. So reams of paper produced by the Law Commission can just be written off. Goa's Second Law Commission, whose tenure was from 20<sup>th</sup> January 2009 to March 2012, when the new BJP led Government assumed office, submitted 23 reports, which the Chair of the 3<sup>rd</sup> Law Commission, constituted in May 2012, announced they would review, but no review has occurred so far. The Chair has since become a Member of Parliament and hence the post lays vacant. The question thus is whether it is worthwhile for feminists to engage if the Law Commission gets reduced to this? Perhaps yes, because it still can help to create the common sense that is necessary in the forward march.

Local laws such as the Agricultural Tenancy Act, Mundkar Act and Rent Act, confer certain rights on certain sections of the population. Most of these laws are modelled around Indian laws and their understanding of joint families, in which the married daughters do not figure, although the Family Laws of Goa do not discriminate against a married daughter for inheritance. Do these State level laws not need to be synchronized with the family laws? If not, why not? Maybe such mismatch in laws does not exist in other parts of India because these central laws are crafted against the backdrop of the personal laws of those parts of India? Is this why no Law Commission of India report has

dwelt on the question of harmonization of the various laws with the family laws yet?

It is not as if the Goa Law Commissions can be absolved. The Third and last Law Commission, in its third and last (thus far) Report submitted in August 2013, on Proposed Amendments to the Goa Daman and Diu Agricultural Tenancy Act, has restricted its recommendations to a change in the forum where agricultural tenancy claims should be agitated, and nowhere is there a discussion on a daughter's rights in parents' tenanted property. This was also the case with the Second Law Commission, which, while proposing amendments to the tenancy laws, did not examine them through a gender lens. There are no Reports of the Second Goa Law Commission, or any references in its Reports, for instance, dwelling on the prevailing non-devolution of *mundkari* or tenanted properties/dwelling houses on married daughters, in principle. Also take, for example, Report No. 13 of the Second Goa Law Commission on Law regulating the Ownership of Apartment and Promotion of the Construction, Sale, Management and Transfer, which was submitted in March 2011. It well echoes a local concern that may not find resonance at the national level because of different realities in the different states. So it makes out a case for registration of flats. However, given the tendency of new forms of ownership, such as flats and shares in Cooperative Societies permitting transfers and devolution along Indian lines, there was a specific need to provide that in matters of inheritance and matrimonial property, devolution/moiety-share/transfer of holdings must occur in terms of the family law, and nothing in their proposed draft could be seen in derogation of the family law.

Not that what was recommended in the Report No. 13 of the Second Law Commission or in many of the other Reports saw the light of day or was even debated in the Assembly. Many reports of the Goa Law Commission lie cast aside. These include the Report of the First Law Commission that proposed and drafted a law that would make explicit what Central laws are being extended and what laws are repealed and also proposed and drafted The Goa, Daman and Diu Adoptions Bill (to date, adoption is not recognised in the main Family Laws of Goa), and the Reports of the Second Law Commission, such as the Reports on Conservation and Management of Agricultural Land and Water Bodies, saving Goan Agricultural Land for Goans and reforms in Excise laws (which incidentally did not speak to issues that women's groups in Goa have been raising with respect to Excise Laws). It remains a challenge for feminists *both* to engage with the Law Commission and to ensure an engagement and accountability by the Legislators to respond to the Law Commission's recommendations, either accepting or rejecting them with reasons. But it is essential to remember that even in their present state, Law Commission Reports do have the potential, at the end of the day, to contribute towards creating the common sense, the ground swell on which to strengthen

the case for reform or to be the plank for foregrounding discussions, and this potential needs to be tapped in terms of engaging with Law Commissions.

Thus, we see that the size of Goa can either be terribly enabling to maintain this status quo position or encouragingly disabling from perpetuating the position. Can we bring the gaze of the local Law Commission to draw empirically from concerns on the ground to define their work? The “Goan” arguments studiously avoid the recognition of the diversity within and also refuse to appraise themselves of local hierarchies of castes, sub-castes, class and gender. There is fear that history will be retold, that histories will be engendered, and to counter this comes an assertion of revising history that gives Goa’s past, either the Portuguese past or the pre-Portuguese past, as the case may be, a glow so golden that it will dazzle the sights of the local situation and fail to illuminate the sites of the local margins over various points of time. They are too close to home and the sights are turned outwards to talk of the glorious Uniform Civil Code which is supposed to be our one-upmanship over the ‘rest of India’, never mind that it is not all that ‘just’ and even to the extent that it is just, it has been reduced to a pale shadow of its former self because, among other things, of the evolution of the nature of property holdings from 1930 to now, which it does not cover or covers inadequately. Property holdings such as rent-backs, condominiums (when it comes to owned properties of sorts), tenuous or contractual holdings, or shares in a co-operative society or shares generally for that matter are inadequately dealt with. Particularly in the matter of family laws, women seem to be caught in the cross-currents or burnt out in the cross-fires of these various strands of nationalist discourse, where women are pedestalized and disrobed of their humanity to be the fossilised symbols of stagnant cultures, be they religious cultures or secular ‘territorial’ cultures.

## V. THE LAW COMMISSIONS OF INDIA AND THE LAW COMMISSIONS OF GOA IN HARMONY

There are terrains though through which the Law Commissions of India and the Law Commissions of Goa all together tread in harmony, signifying the complete ‘integration’ of Goa into India. Yet, they do not even vaguely redress feminist concerns.

Take the following situation where you find the Law Commission of India and the Goa Legislature and Executive operating with perfect unwritten non-verbal coordination.

A complaint of dowry harassment is made in the late 1980’s at a city police station in Goa by a woman against her husband who happens to be the brother of a high-ranking Goan police officer. The IPS officer (IPS officers are almost always non-Goans) who we interact with says that there is a prima facie case of dowry that calls for registration of an FIR against that person to

proceed with investigations. There is resistance within the Department because it is a relative of one of their own. They try to find ways of preventing this registration. A brain at the Secretariat offers an answer which cannot be dismissed because it is about the law. The bombshell is thrown. The Dowry Prohibition Act, 1961, is not applicable to Goa. Indeed it isn't. And that is a discovery, though not a surprising discovery. When the first women's rights organization *Bailancho Saad* was being launched in 1986, there appeared to be stiff resistance from other rights organizations, trade unions, and student organizations, apart from the other anticipated suspects. The articulation was: why should there be a women's rights organization in Goa at all? Sons and daughters have equal rights in parental property. This same logic was applied in the period immediately following Goa's integration to India in 1961, when the call was taken as to which pre-19 December 1961 laws from India should be extended to Goa, via the Goa, Daman and Diu Administration Act, 1962. The Dowry Prohibition Act, 1961, was not extended to Goa. The call was taken on the fallacious premise that since Goa has family laws that ensure that sons and daughters have equal shares in property and further, there is also the concept of matrimonial property rights; there can be no dowry demand or dowry harassment. This completely negated the consumerist character of dowry. It needed persistent demands for the extension of the law to Goa to actually get the Goa Legislature to extend the law to Goa, years later.

On the other hand, in the discourse on dowry at the national level and even in the relevant Law Commission Reports, there was a complete failure to read the experience of Goa that would tell the tale that while inheritance rights for daughters is laudable, it is not the solution for dowry harassment. The eradication of dowry harassment was somehow conflated with inheritance rights. Leading the discourse at that time, through the magazine *Manushi* widely read across India, was Madhu Kishwar. Kishwar had stated that "If women's inheritance rights were to become real, dowry in its present form would disappear"<sup>12</sup>.

Crime statistics from Goa continued to send a nil report as far as cases registered under the Dowry Prohibition Act. The rest of India would not know that this is not because there is no dowry harassment, but simply because cases could not be registered under the Act since the Act was not applicable to Goa. They would assume that Goa was dowry-free. This logic would obviously extend to the Law Commission which apparently made no effort to elicit the opinion of anyone in Goa, when deciding the scope of its scrutiny in drawing up its 91<sup>st</sup> Report on Dowry Deaths and Law Reform, wherein it has proposed amendments in the Hindu Marriage Act, 1955, the Indian Penal Code, 1860, and the Indian Evidence Act, 1862, but shied away from taking up the case of Christian law, the Shariat and also the Goa Family Laws, which could do with incorporating persistent demands for dowry as an example of cruelty.

<sup>12</sup> Madhu Kishwar, *Rethinking Dowry Boycott*, 10 *Manushi*, 48 (1988).



## VI. OTHER INSTITUTIONALISED LAW REFORM PROCESSES OR MEDIA FOR LAW REFORM

This brings us to several institutions that have the potential to contribute to law reform, such as the National Commission for Women, the National Commission for Human Rights, the National Commission for Scheduled Castes and the National Commission for Protection of Child Rights. These Commissions appear to have gone the way of the Law Commission of India, in not making specific attempts to identify concerns or different manifestations or stages of concerns, when advancing the case for law reform in a particular field. This can be seen if one flips through the participation that they have sought (or failed to actively seek) in the crafting of proposed legislation around various issues including sexual offences. For instance, the demand of the North East for repeal of the Armed Forces Special Powers Act does not find echo or even an analysis in any report of the Law Commission or of the various Commissions mentioned above. It does not even figure in the Reports on Obsolete Laws, except where reference is made that the Armed Forces (Special Powers) Ordinance, which is Ordinance 41 of 1942, should be repealed as it overlaps with the Armed Forces Special Powers Act, 1958. The test of obsolescence has been expanded from overlaps, to encompass, for instance, laws that were meant to serve the needs of the British Empire and are therefore redundant. However that expansion of 'obsolescence' has been circumscribed by certain obsolete beliefs about women and therefore a blindness to check certain laws for their obsolescence, and also by a certain cartographic nationalism. Neither successive Law Commissions of India nor successive Goa Law Commissions have thought it necessary to declare void and repealed, for instance, the chapter on Law of the Code and Customs of Gentile Hindus in India, which forms part of the Family Laws of Goa, under which, for instance, sexist/discriminatory provisions explain when polygamy is permissible and provisions allow for the swearing on the coconut or Bhagwad Gita depending on caste. Of course, it has been argued that this law is not really in use and that there are question marks as to its continued applicability to Goa. Some influential legal luminaries of Goa seem to suggest that we should let sleeping dogs lie. However, we cannot ignore the experiences of usage of laws the world over, which are a telling statement on how antiquated misplaced laws that were not questioned because they seemed a dead letter, are invoked to deal with dissidence/political enemies and to reassert identities.

## VII. NON-INSTITUTIONALISED LAW REFORM PROCESSES

It also seems that some law reform processes do not go through the scanner of Law Commissions and it appears that this has sometimes been for the better. For instance, one does not find any report of the Law Commission on pre-natal diagnostic techniques and pre-selection tests. Or, for that matter, on domestic violence and child sexual abuse comprehensively.

And yet the civil society as well as institutional processes that went into the making of the Pre-Conception Pre-Natal Diagnostic Techniques Act (hereinafter referred to as 'PCPNDT Act'), the Protection of Women from Domestic Violence Act, and the Goa Children's Act are phenomenal. When it came to the Central PCPNDT Act, organizations, primary among them being the Forum against Sex Determination and Sex Pre-selection, that found the flaws in the Maharashtra legislation on the subject disseminated information about the same all over the country. On the other hand, organizations elsewhere were open to draw from these experiences as also the realities in their own areas. This made for concerted inputs to the Joint Parliamentary Committee on the subject that pivoted the national law on the subject.

Similarly, the Lawyers' Collective led an initiative that was a mutually reciprocated process of developing drafts, eliciting suggestions, incorporating the suggestions, feeding them back, taking further feedback, etc. There were organizations from across the country involved. Unlike many 'national' initiatives, Goa was not left out. We were able to input terminology such as 'relationships in the nature of marriage' in the domestic violence law. It came from a Goan context where, when marriages have to be necessarily registered to be recognized in the eyes of law, if the registration procedure was only partially followed to the ignorance of the woman, she would have been excluded from the coverage of the Domestic Violence Law, if the expression 'relationship in the nature of marriage' was not included in the law.

The Justice Verma Committee, set up to review the law on sexual violence, also followed a laudable course in generating a discussion all over the country and widely publicizing its existence to seek inputs, besides also giving various persons and the representatives of the State a hearing. It was interesting to see a particular sense of acknowledgement of Goa during the hearing in January 2013. However, dynamics being what they are, and majoritarian considerations holding sway, the issues around tourism related sexual abuse of women got scant attention in the Committee's Report. What for example, happens when a woman tourist is sexually abused? On the other hand, what happens when the perpetrator is foreign? How do we oil the hinges in a way that opens doors for various opinions, comments and suggestions emerging from different regional realities or different manifestations of realities that call for different legal solutions?

This is also evidenced in law reform processes at the State level, that is, at the Goa level. There was a need felt for amendments to family laws, as the same had been frozen to what they were in 1936 in Portugal. Goa's Family laws provided for equal rights to sons and daughters to inheritance if a deceased died intestate. It also provided for testamentary capacity only to dispose off 50% of the respective shares of each spouse by will, besides requiring the consent and acquiescence of the other spouse in drawing the will.

Similarly, the law embodies a concept of matrimonial property, which means that properties whether they are inherited or acquired by either spouse or both spouses either before or after marriage become matrimonial properties unless there is a contract at the time of marriage to the contrary. However, the management of properties is the prerogative of the male spouse unless the male spouse suffers from any impediment. Similarly, the law provides that if a male disposes off, during his life time, properties to the extent of his moiety share, without the consent of his spouse, those can be adjusted against the moiety share, but there is no safeguard to prevent the male spouse from disposing off the entire matrimonial property by not disclosing that what is disposed off exceeds the moiety share or comprises the entire matrimonial property. There has been a felt need for doing away with these discriminatory provisions as well as for *clearly* providing for all forms of assets and holdings to be considered in construing and computing the matrimonial property, be they a share in partnership or shares in a company which are prima facie governed under other laws, such as the Partnership Act and the Companies Act.

These have been amongst the feminist critiques of the family law developed over time through engagements with women, either as women's groups, or through engagement through legal practice. Initial meetings by the women's collective *Bailancho Saad*, of which this writer was then a part, with the Law Secretary of the Government of Goa yielded an expression of lack of power to amend the laws, since the law extending the pre-19 December 1961 laws prevalent in India to Goa, in the years immediately following integration into India in 1961, was passed by Parliament as Goa only had the status of Union Territory and its laws were enacted at the Centre and not locally, as can be done by States that are part of the federal India. Accessing any elected representative at the national level to take note and that too on a non-emotive (for them) issue from this distance, was and still is like trying to remote control the politics without a remote in hand. That is the state of Goa, which in national politics counts only for two seats in the Lok Sabha and one seat in the Rajya Sabha. Until the late 1990's, part of the law was not even translated into English. Subsequently, in the year 2002, the Government of Goa set up a Committee to review and translate the laws and draft a bill on the Goa Family Code. This writer was incorporated into the Committee in the following year after a demand was made by women's groups to have a representative from each of the stake holders on the Review Committee, besides widespread consultative processes which would provide the empirical evidence base for recommending the reforms needed. There was however a focus on working on reviewing the local succession law and the procedure for inventory (legal procedure for opening the inheritance on the demise of a person) and a move to introduce the chapters piecemeal. This did not sit well either with lawyers or with the public who were weary of the dismantling of the existing laws without putting a holistic viable alternative for assessment. There has also been a stiff resistance to touching the local laws from quite another angle

which feminists have cause to be weary of. It comes from a Goan nationalist sentiment that looks at the family laws of Goa as an uniform civil code and as a badge of its 'superior' identity and is hence unwilling to engage in any discussion about amending it. It has meant negotiating through wedges in these prejudiced, fortunately fractured, resistances towards law reform or towards opposing law reform that was anti-people.

On the other hand, there is a problem with dissociating law reform related to family laws and what are considered women's issues from the mainstream law reform, as such law reform processes then do not have a status and can get quietly wound up, as had happened with the Goa Family Law Review Committee, without an explanation as to the winding up or rationale as to the acceptance or recommendations of these Committees. The Goa Family Law Review Committee had made some important progressive recommendations. For instance, Goa Family law had provisions meant to govern the mode of succession and the procedures for determining succession in courts as well as functionaries before whom documentation in connection with succession could be executed. A Goa Succession, Special Notaries and Inventory Proceeding Bill, drafted by the Goa Family Law Review Committee had, after critically reviewing the existing law, provided that the eldest person should be the head of the family and had sought to delete the provision which provided that preference shall be given to males over females in determining who shall be the head of the family for managing the property and initiating the inventory proceedings to determine succession of a deceased person. This suggestion was born out of a feminist demand against such discrimination in procedure, quaintly combined with both a genuine consciousness in some as well as a certain different kind of consciousness in others that intellectuals and professionals are driven to conform to, to meet the requirement of superiority over the 'Indian' population as well as over certain sections of the Goan population.

These ad hoc initiatives have however displayed better potential to take a bigger canopy into account than the institutionalized initiatives and one wonders if heavy long standing institutionalization without monitoring leads to fossilization? Or can these parallel initiatives challenge the Law Commissions out of their Alice in Wonderland slumber to emulate this expansion of the canopy from and on which they script their suggestions?

### **VIII. SOME CHALLENGES POSED BY FEMINIST ENGAGEMENT WITH LAW REFORM - FROM GOA AND FROM INDIA**

How would law reform take into account racial demographics in a small size state like Goa where its long settled people feel overwhelmed by the presence and influx of certain populations to the point of outnumbering them, while the lower economic strata of migrants are perpetually considered 'outsiders' no matter how their futures are bound with the futures of Goa and left

dangling as vote-banks in the hands of politicians? Where women's homes and hearths are insecure either because of the stomping in of corporate powers or for being the outsider other at the mercy of the dominant Goans? How does law reform take into account the changing nature of capitalism in a context where global capital enters and vies to be treated as a person equal to an individual, as happened when Special Economic Zone (SEZ) developers sought to acquire (or should one say usurp) and develop land, or as is still happening with real estate developers that give gated communities a premium privilege of access to land, credit, water, everything?

At another level, the main plank of challenge to SEZs in the rest of India was the acquisition of agricultural land for these SEZs. The main narrative was that the SEZs were going to generate 10 lakh jobs and the population of Goans itself was said to be 9 lakhs, necessitating a further influx of those poorer migrants who Goans pejoratively call 'outsiders'. So how would feminists challenging the hierarchies of caste, class, nation, sexual orientation, ability, and nationalist discourse wade through this maze of dominant positions to posit a challenge to law reform? Can law reform itself bring about the change we want to see, or does it mean going both with and beyond law, with clarity on the scope and limits of law reform?

Flavia Agnes appropriately remarks, "If oppression could be tackled by passing laws, then the decade of the 1980's would be adjudged a golden period for Indian women, where protective laws were offered on a platter....Why were the laws ineffective in tackling the problem?"<sup>13</sup> Clearly, a legal battle should only supplement the political battle outside the courts.<sup>14</sup>

## IX. CONCLUSION

A prevailing concept of a monolithic Indian woman and Indian nation outlaws the experiences of the Goan- of caste, class, ethnic origin, origin of place, sexual orientation and gender that women have- intertwining all identities together. A differentiated universalism is what is called for and consequently a "common but differentiated responsibility" – a much used expression in the context of pinning responsibility for global warming and stemming the tide of climate change which need not be confined to that domain alone, is needed and desired.<sup>15</sup>

Law Commissions and law reform initiatives need to engage in evidence based research from across the Indian sub-continent. They must conduct

<sup>13</sup> Flavia Agnes, *Protecting Women Against Violence? Review of a Decade of Legislation 1980-89*, in *THE STATE AND POLITICS IN INDIA*, (Partha Chatterjee ed., 1997).

<sup>14</sup> Nandita Haksar, *Human Rights Lawyering: A Feminist Perspective in ENGINEERING LAW: ESSAYS IN HONOUR OF LOTIKA SARKAR* (Dhanda & Parashar ed., 1997).

<sup>15</sup> A term used by R. LISTER, in *CITIZENSHIP: FEMINIST PERSPECTIVES* 91(2<sup>nd</sup> ed., 2003).

exhaustive empirical studies that span geographies, histories and epistemologies. Collection and reading of historicized accounts is yet another need. Where questionnaires are framed, it may be useful to see that such questions inform the questionnaire that will be able to elicit region/sector specific experiences. Discussion papers must also be built on these foundations. Law is both a product of social engineering as well as an engineer of the society. Therefore, the corresponding levels of social common sense are necessary to harmonise with law reform.

Law Commissions of India must be conscious of the perhaps sub-conscious outlawing of spaces from their imaginary of India, as must Law Commissions of Goa of the invisibility of women, and various sections of women at that, from their imaginary of Goa and its engagement with law. They cannot miss out on a comprehensive reality check. The red tape of bureaucracy, the gridlock of federalism and the pushes of globalisation should not come in the way of an active engagement with law reform.

A law commission that engages must let every woman count, must let every region count, every section of society count, and must count Goa in weaving the imaginary of India. This means Goa must cease to be looked at as merely a leisure destination and people in Goa and Goans must find and have a voice in law reform. In the times of substantive equality, the weighing scales for counting have to affirmatively come down/up with the weights in favour of those sections that have been historically marginalized or ignored.

An intersectional and multicultural strategy is necessary for Law Commissions to recognise and respond to different epistemologies, including those dictated by different histories. As Abu-Lughod has advocated, we need to “undertake hard work involved in respecting and recognising differences—precisely as products of different histories, as expressions of different circumstances and as manifestations of differently structured desires. We may want justice for women, but can we accept that there might be different ideas about justice and that different women might want, or choose, different futures from what we envision as best? We must consider that they might be called to personhood, so to speak, in a different language.<sup>16</sup> “The buffer to prevent slippages into an unwitting imperial standpoint is to educate one’s affect with these different perspectives before settling on a position.<sup>17</sup> “[There are] perils of relying exclusively on the situated knowledge of a golden few.”<sup>18</sup>

The Law Commission needs to develop a co-operative participatory learning model rather than a banking model where it deposits its value systems

<sup>16</sup> Lila Abu-Lughod, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others* 104(3) *American Anthropologist* 783, 784 (2002).

<sup>17</sup> Michelle Chan, *Beyond Bountiful: Toward an Intersectional and Postcolonial Feminist Intervention in the British Columbia Polygamy Reference* 16 *Appeal* 15-30 (2011).

<sup>18</sup> *Id.*

into people who it engages with. They need to hear stories, real life stories that people are telling them about their lives, about their family, about their next of kin and about their community. They need to listen and make a sense of those stories. It may mean unlearning some of the things they have learnt in law school, as lawyers or as judges. It may mean challenging certain kinds of dominant jurisprudence that thrives on universality of thought and that ceases to see the rest as scientific (*read* affirmed by the majority) simply because it is not universal.

The States within the Indian Union are governed by a common Constitution and just as well. There is the pull and push of a system that is at once parochial and distancing. If feminism is to be truly global, however, a powerful and persuasive way of relating the universal and the particular must be found.<sup>19</sup>

At the end of the day, “feminism’s concern with women’s specificity has expanded to include a concern with religious, cultural and other differences and has led to alliances between feminist, postmodern and communitarian thinkers”.<sup>20</sup>

In a context, where increasingly, there is a tendency to be dismissive about a discourse that challenges the way the normative space of the citizenship of various Goans, and those in Goa, is shaped, there is need for a conceptual revision of what law can do, on what pillars must reform be based, and to consider how might this reform be phrased and effected in a spirit of plural equality.

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<sup>19</sup> SIOBHAN MULLALLY, INTRODUCTION GENDER, CULTURE AND HUMAN RIGHTS: RECLAIMING UNIVERSALISM (2006).

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