

**SPEECH OF HON'BLE SHRI JUSTICE DIPANKAR DATTA,
CHIEF JUSTICE OF THE HIGH COURT OF BOMBAY
AT FULL COURT REFERENCE IN THE MEMORY OF LATE
HON'BLE
DR. JUSTICE GUSTAVO FILIPE COUTO, FORMER JUDGE OF
THE BOMBAY HIGH COURT, IN COURT HALL NO.1 OF THE
HIGH COURT OF BOMBAY AT GOA
ON THIS 18TH DAY OF SEPTEMBER, 2021 AT 10.00 AM.**

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My esteemed sister and brother Judges,

Mr. Anil Singh, Additional Solicitor General,

Mr. D. Pangam, Advocate General for the State of Goa,

Mr. J. P Mulgaonkar, President of the High Court Bar Association,

the members of the Executive Committee of the Association,

esteemed senior Advocates and other learned members of the Bar,

bereaved members of the Couto family,

members of the Registry and the staff,

Ladies and Gentleman.

Ernest Hemingway once wrote *“Every man’s life ends the same way. It is only the details of how he lived and how he died that distinguish one man from another.”*

It is with a heavy heart that we have assembled this morning to pay obeisance to Justice Dr. Gustavo Filipe Couto, a distinguished former Judge of the Bombay High Court, who left us for his heavenly abode on the 20th of last month at the ripe old age of 93 years.

Born in Margao on the 16th of March, 1928, to Francisco Philip Couto, a Chartered Accountant and Maria Helena Colaco, Justice Dr. Couto went to Lisbon, Portugal around the age of 3,

where he did a brief stint at primary level and later joined the Augustin Vincent Lawrence School at Margao for his primary education. He completed his Lyceum in Arts at the Alfonso-de-Albuquerque Institute Panaji and thereafter in the late 1940s proceeded again to Portugal for studies in Law. He procured a Doctorate in Law from the University of Lisboa, Lisbon, Portugal. He joined the Judiciary to fulfill his dear mother's wishes. In fact, his maternal grandfather and some of his relatives had obtained degrees in Law but never practiced it. Therefore, his dear mother was quite keen that her son joins the judiciary. Justice Dr. Couto was the only one from his family to pursue this noble vocation then. Now, his younger son Alexandre Couto is a practicing advocate. His elder son, Dr. Francis Couto is a distinguished doctor known for his dedicated service at the Goa Medical College.

Justice Dr. Couto started his career in the Portuguese Overseas Judiciary in 1954 and served with distinction as a Comarca Judge in various Court divisions in Angola and Goa. He also officiated as the Procurador da Republica (Judge Advocate General) of Goa, a post occupied by Judges of the rank of Juiz da Relacao (High Court Judge). He also served on the Portuguese Governor General's Governing Councils and also as an advisor to the last Portuguese Governor-General.

After liberation, Justice Dr. Couto served as Senior Division Judge, as Additional District and Sessions Judge, and subsequently

as District and Sessions Judge of Goa, Daman, and Diu. In all these positions, Justice Dr. Couto left his indelible mark. By his hard work coupled with bright intellect, Justice Dr. Couto made the transition from the Portuguese legal system in which he was trained, to the new Indian legal system that he adopted, quite simply. His mastery in the continued Portuguese laws and the then just extended Indian laws, contributed a lot to the assimilation of the two systems in the crucial years after the liberation. This was the foundation on which several others who followed could then build on.

Justice Dr. Couto was appointed as Additional Judicial Commissioner in 1981 and as the last Judicial Commissioner of Goa, he served with great distinction. The jurisdiction of the Bombay High Court was extended to Goa, Daman, and Diu in 1982 and Justice Dr. Couto was the first Judge from Goa to be elevated as a Judge of the Bombay High Court in the year 1982 itself. Mr. Fali Nariman, in his autobiography '*Before memory fades*' refers to Justice Dr. Couto on page 75, and I quote:

"Dr. Justice G. F. Couto who was judicial commissioner at the time was elevated to the bench of the high court of Bombay(at Goa). I appeared before him on several occasions. He looked resplendent in court in his long black robes and embroidered cravat('bands')which was how judges were dressed in the Portuguese tradition."

As a judge, Justice Dr. Couto excelled in rendering justice. Such excellence is reflected in the reported and unreported judgments

delivered by him on varied subjects. I am informed that except on some rare occasions, Justice Dr. Couto would start dictating his judgments from the dais, no sooner than the arguments concluded. His judgments were always clear, crisp, brief, and pointed. There were no ambiguities or unnecessary legal jargon. True to his oath, Justice Dr. Couto decided cases without fear or favor. His tenure of about eight years is defined by his unquestionable integrity, quick grasp, keen intellect, coupled with impeccable manners and courtesy.

For the record, Justice Dr. Couto held office of Judge of the Bombay High Court between 30th October, 1982 and 15th March, 1990.

In his distinguished career, Justice Dr. Couto held several positions like a Member of the National Security Advisory Board, Member of the first Executive Council of the Goa University, and Chairman of the Goa Public Men's Corruption (Investigations and Inquiries) Commission, to name a few. Here again, his contribution to public service was sterling.

In his private life, Justice Dr. Couto was very fond of philately and gardening. He was a family man always supported by his loving wife Mrs. Maria Telma Da Costa Couto and his wonderful children, Francis, Alexandre, and daughter Maria Helena. The couple was blessed with a daughter-in-law Kim, a professor at the Law College, and son-in-law Carlos Dias, not to forget the grandchildren who were the joy of his life. The values

that Justice Dr. Couto and his loving wife inculcated in their children and grandchildren adds to the significant legacy left behind by Justice Dr. Couto.

On behalf of my colleague Judges as well as on my personal behalf, I convey our heartfelt condolences to the bereaved family members and pray that the Almighty gives them the strength to bear this irreplaceable loss.

Justice Dr. Couto is no more with us today. The grief for such loss is quite natural. But today, let us not mourn the loss of the flame. Let us celebrate how brightly the flame burned. Today, let us thank Justice Dr. Couto for his great service to our great institution, and pay our collective tributes to the noble and departed soul. May his soul rest in eternal peace!!!

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**SPEECH OF HON'BLE SHRI ANIL C. SINGH,
ADDITIONAL SOLICITOR GENERAL OF INDIA
AT FULL COURT REFERENCE IN THE MEMORY OF
LATE HON'BLE DR. JUSTICE GUSTAVO FILIPE COUTO,
FORMER JUDGE OF THE BOMBAY HIGH COURT, IN COURT
HALL NO.1 OF THE HIGH COURT OF BOMBAY AT GOA
ON THIS 18TH DAY OF SEPTEMBER, 2021 AT 10.00 AM.**

The Hon'ble Chief Justice,

Hon' ble Judges of this Court,

Advocate General of Goa Shri Devidas Pangam

President of High Court Bar Association, Shri Jayant Mulgaonkar

Family members of late Justice G.F. Couto,

Member of the registry

Members of the Bar,

Ladies & Gentlemen

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We assemble this morning to pay our respectful homage to Late Justice G.F. Couto.

Justice G.F. Couto was known to be an upright, honest, hardworking and disciplinarian judge. The departed legal luminary had a ringside view to some of the most important moments in Goa's legal history.

Justice G.F. Couto studied law at the University of Lisbon, in Portugal, had a long illustrious judicial career. At the time of Liberation of Goa, some of his contemporaries, occupying various important posts, chose to embrace the

Portuguese nationality. However, Justice Couto, the true son of the soil, opted to be a part of the Indian judicial service.

Justice Couto was appointed "Delegado" in Goa, and had served at various posts including the Advocate General equivalent in the State of Goa as well as various judicial posts including the post of the Judicial Commissioner, prior to being appointed as Judge of the Bombay High Court in 1982.

Goa has a brilliant history of judicial system. Goa was ruled by Adil Shah, Sultan of Bijapur who was the head of the Sultanate judicial system and had at the top a Qazi and below, judicial magistrates. Thereafter, somewhere in the year 1526, the Portugese started their own judicial system and later on established a high court but designated it as a Tribunal, which was headed by a Chancellor. After liberation, the Tribunal was abolished and substituted by judicial commissioner's court which had lesser powers than a High Court. There was a long-standing demand for a full-fledged high court which was established in the year 1982. Justice Couto was the first High Court Judge appointed after establishment of High Court Bench at Goa.

He retired as a high Court Judge in 1990. After his retirement he was appointed as Chairman and / or member as already indicated by the Hon'ble Chief Justice and a founder trustee of the International Centre of Goa.

Justice Couto was well known for his legal acumen and patience. Throughout his judicial career he dealt with the conflict between the Indian and Portuguese laws. Justice Couto left his mark in the judicial history of our country by taking every dispute to its logical conclusion and for deciding on fundamental issues of the matter by going into the depths of jurisprudence.

He passed a number of landmark judgments on Mundkar Act, Rent Act; Civil Code; Land-Revenue Code; Evidence Act; Constitution; General Clauses Act; Stamp Act; Companies Act and Land Acquisition Act.

Justice Couto was kind hearted man, but believed that a man is bound by his words and must face the consequences of his actions. Such was his integrity. This was demonstrated in the judgement delivered by him in the matter of *Tyron Nazareth v. State*. In this case the appellant had pleaded guilty to the offence under the NDPS Act, whereupon the sessions judge had imposed minimum punishment. The Appellant then challenged the conviction and urged that sessions judge ought not to have accepted the plea of guilt of the Appellant, as the Appellant appeared in person and was not represented by a counsel.

The division bench consisting of Justice Couto upheld the conviction and held that the Appellant, even if he was appearing in person, understood the meaning of the charge and must face the consequences of his confession of guilt. This judgement shows that his approach towards matters was not only sensitive but also pragmatic and realistic.

Justice Couto not only cared about the litigants but also the issues of the society. Justice Couto always took a liberal approach whilst deciding matters. This is demonstrated in various judgements passed by him. In one of the matters, he held that, liberal interpretation has to be given to the provisions of law in order to administer proper justice.

Justice Couto was known to be eloquent writer. Reading the judgements that he has authored is nothing short of a pleasurable experience. In one such matter pertaining to the Mundkar Act prevalent in Goa, Justice Couto has expressed his mind in very beautiful words. It was the judgement in the matter of *Joseph Almeida & Anr v. Krishnath Hariyan*, where the Petitioner had given her ancestral house to the Respondent under humanitarian grounds, but later the Respondents claimed to be Mundkars of the House. In this matter, Justice Couto said the following:

And I quote:

“The petitioners indeed having given shelter to respondent No. 1 and his family in their hour of need, find now themselves in a strange situation of being deprived, due to the acts of the latter, of their ancestral house. The old story of the camel and the kind hearted Arab, who is driven out of his tent, is thus repeated.”

And ultimately held that the Respondents were not Mundkars.

Besides his legal jurisprudence, his towering personality left its permanent impact on the legal and judicial fraternity in Goa.

Justice Couto was not merely restricted to the legal jurisprudence but took effort in acquainting himself with the social structure of the Indian Society. This helped him to deal with the public interest litigations successfully which was developing and was at a nascent stage in the country.

Apart from the judicial career, Justice Couto occupied several other positions in public life. Justice Couto also found a mention in eminent Constitutional Jurist Fali Nariman's book, 'Before Memory Fades'.

His death is a great loss to the legal fraternity. He is survived by his wife, 2 sons and a daughter. I pay respectful homage to the wide legacy he has left behind him and pray that his soul rests in peace.

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SPEECH OF HON'BLE SHRI D. PANGAM,
ADVOCATE GENERAL GOVERNMENT OF GOA
AT FULL COURT REFERENCE IN THE MEMORY OF
LATE HON'BLE DR. JUSTICE GUSTAVO FILIPE COUTO,
FORMER JUDGE OF THE BOMBAY HIGH COURT, IN COURT
HALL NO.1 OF THE HIGH COURT OF BOMBAY AT GOA
ON THIS 18TH DAY OF SEPTEMBER, 2021 AT 10.00 AM.

My Lords,

Justice Couto was the first Goan Judge of the Bombay High Court. Justice Couto shall always be remembered as a thoroughly decent, humane, engaging, thoughtful and a genuine man who served his State and its people for over 20 years as a competent, influential and accomplished jurist. He started his judicial career in 1954 in the Portuguese overseas judiciary and worked his way through the judiciary to become the first Goan Judge of the Bombay High Court.

During the pre-liberation times, the general public often perceived Judges to be stern, formal and detached, dispensing justice from a perch quite unconnected to the real life experiences of the common Goan people. However, Justice Couto changed that perception. He was the antithesis of every component of that perception.

I did not have the privileged opportunity of appearing before Justice Couto. My acquaintance of Justice Couto is through the judgments delivered by him which are etched in the annals of history of the Judiciary of Goa and India. His decision in *Elsa Barreto v. B. da Cruz, Deputy Director of Education* delivered in 1982 was at that point in time considered to be a path breaking

ruling upholding a different facet of Principles of Natural Justice. Justice Couto has delivered many judgments having constitutional importance. His interpretation of the provisions of the Constitution in the judgments delivered in *Antonio B. Furcado v. Bank of India*, *R.X.A De Monte Furtado v. Administrator, Goa, Daman and Diu* and *Smt. Halima ShaikYacub v. Srinivassa N. Pai* have been widely lauded as astute and luminous. His judgment in the customs law case of *V.M. Salgaocar and Brother Pvt. Ltd v. The Assistant Collector of Customs, Goa* put to rest a then much debated issue of law regarding at what stage of the whole export process is the export duty payable on goods exported. His judgment in *Shaba YeshwantNaik v. VinodkumarGosalia* highlighted the nuances of law pertaining to attachment of properties lying outside the territorial jurisdiction of the Court.

My Lords,

We have lost, a notable and respected Goan jurist who enhanced the public trust and confidence in our legal system. It has been stated that the Judge is the pillar of our entire judicial system. In that regard, Justice Couto was a strong, reliable and a steadfast pillar who significantly contributed to the preservation of the administration of justice in Goa and the development of our jurisprudence. Our system is better off for his public service and we can learn from his quiet dignity, his passionate commitment to justice and his unfailing fairness.

I pay tribute to late Justice Couto as the Advocate General, on behalf of the State of Goa and on behalf of the Bar Council of Maharashtra and Goa.

May he rest in peace.

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**SPEECH OF MR. JAYANT P. MULGAONKAR,
PRESIDENT, THE GOA HIGH COURT BAR ASSOCIATION,
AT FULL COURT REFERENCE IN THE MEMORY OF
LATE HON'BLE DR. JUSTICE GUSTAVO FILIPE COUTO,
FORMER JUDGE OF THE BOMBAY HIGH COURT, IN COURT
HALL NO.1 OF THE HIGH COURT OF BOMBAY AT GOA
ON THIS 18TH DAY OF SEPTEMBER, 2021 AT 10.00 AM.**

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My Lords,

I fully share the sentiments expressed by My Lord the Chief Justice , the learned Advocate General and the learned Additional Solicitor General.

A new chapter in Goa's judicial history opened on 30th October, 1982 and the name Justice Dr. Gustavo Filipe Couto is inextricably linked to that chapter. Justice Dr.Couto was part of the very first Bench that sat on the inaugural day presided over by the then Chief Justice of Bombay High Court, Shri Justice D. P. Madon. He was also on the Bench presided by late Shri Justice D. M. Rege which there after had sittings to transact the regular judicial business in the early days of the Bench . Since then and until the date of his retirement on 15th March 1990, Justice Dr.Couto was a constant presence on the Bench, sitting either singly or on Division Bench with some of the most distinguished visiting Judges of this Court. In later years he often presided over the Division Bench, sitting mostly with late Shri Justice G. D. Kamat, who was the first from the Goa Bar to be elevated to the Bench of this Court. Justice Dr.Couto impacted the careers of the lawyers of that generation during those eight years in one way or the other during their formative years. Justice Dr.Couto had reputation for being a strict disciplinarian. But he was himself very disciplined with strong work ethic. He

is also remembered for his strong views and strong likes and dislikes. We cannot forget that Justice Couto was from among the judges and lawyers whose entire education and training in law had been in Portuguese language. After liberation, they had to adapt themselves to English which now was the court language and which they might only learnt as the second or perhaps even the third language . They also had to adapt to the new sets of laws, a new legal idiom and a different legal system with much greater emphasis on the oral hearings. It must have been a career crisis. But it also was a challenge. This adaptation was achieved in varying degrees of success and at least in some cases , most admirably. If one reads the reported judgments authored by Justice Dr.Couto today, given on diverse branches of law, ranging from the pre-liberation civil laws over which he naturally had mastery , to the civil laws that were extended after liberation or enacted after liberation, criminal appeals, preventive detention and service laws and the matters involving constitutional issues , one is struck by the clarity and felicity with which they are written. Justice Dr.Couto sometimes spoke of the initial difficulties he faced in switching over to the English language and he told with rare candour in a press interview that he gave a few years ago, that he could barely express himself in English at the initial stage when this transition was taking place. That he surmounted those difficulties to achieve a measure of command over the English language is truly amazing. There is no doubt that this could not have been achieved by him without immense industry and application.

On behalf of the Bar I wish to convey to the bereaved family of Justice Dr.Couto, to Mrs. Maria TelmaDa Costa Couto, in particular, and to his sons Dr.Francisco Couto and Advocate Alexander Couto, who having followed the footsteps of his illustrious father entered the legal profession, is an esteemed colleague of ours, and also to his daughter Maria Helena and the other members of the family of Justice Dr.Couto, our deepest sympathies and heartfelt condolences. Indeed, we share their profound sense of loss.

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