



By ALBERTINA ALMEIDA

An Independent High Court for Goa Yes, But...

Oftentimes after Statehood, the demand for an Independent High Court for Goa has been raised. While the demand is perfectly constitutional, the prerogative to grant it rests with the Parliament. Not every State in India has an independent High Court, and, in some cases, if the States are small, they share a common High Court.

So why an independent High Court for Goa, when it is a small State, and moreover with Statehood granted only from 1987? The argument for it is precisely its size, as the local concerns of the state should not be swept aside by a much larger Maharashtra State. The need is also to snap the big brother attitude towards Goa. This need, combined with Goa's different history, a long period of Portuguese past, calls for an independent High Court. Historically, right from 1544, Goa has had its own Tribunal da Relação, with five judges. Even then, the Portuguese Government had little control over Goa's Tribunal. To the extent it did, it was much less than the control presently wielded by the principal seat of the Bombay High Court at Bombay over its seat at Goa. All these realities call for Parliament to recalibrate its approach, and not consider merely the size of the state or the population as the criteria for granting an independent High Court to Goa.

If and when Parliament legislates for an independent High Court for Goa, the Goa Legislative Assembly has the possibilities of legislating on matters pertaining to the High Court, which will be exemplary in its constitution and practice. Such a visionary High Court must reaffirm its commitment to the constitutionally mandated plural democratic secular socialist system. And yet, it should allow for focussed attention on Goa's specific laws and for respecting Goa's historical context. It needs to be factored that certain Goa specific laws were part of a civil law system (where the Courts do not go by precedents) and not a common law system (which follows precedents), and have now been absorbed into a common law system, where the number of case precedents at the level of the High Court and the Supreme Court do not yet constitute a critical mass. For this and other reasons, these laws need critical attention in their interpretation. It would seem that it is only then that the asymmetry of power between Maharashtra (big state) and Goa (small state, different legal history) will be addressed. Otherwise Goa's identity, established through its unique history, the labour/toil of many Goans, along with local knowledge systems, could simply vanish.



However, I would qualify my agreement, to address the legitimate concerns of some of those who are genuinely opposing the formation of an independent High Court. If we are going to have a High Court after all these years, we cannot have a High Court which is a replica of the Bombay High Court or other High Courts. Such type of Courts will only maintain the status quo, with all the ills that are being complained about.

Therefore, the need is to pay attention to the voices of the critics of the proposal for an independent High Court. It is necessary to deliberate on what could go into a local legislation on the Goa High Court. One of the principal apprehensions is that only the current advantaged groups in Goa will dominate the institution, further alienating the problems of the marginalized communities in Goa. This is a valid concern.

In every state in India, there is a caste-, class- and gender-based dominance in society. There is Brahminical corporate hegemony. Goa is not an exception. Closer to the point of judiciary, if one peruses the list of those from Goa, who have been elevated to the position of High Court Judge, one can see that *all* of them belong to the dominant *savarna* castes. The concern is that local dominant elites could hold sway in terms of judicial appointments to the High Court, and it will be harder for the marginalized to fight for justice.

If we are to ask for an independent High Court, then why not envision a diverse judiciary? Why not envision legislation for an independent High Court, that provides for a diversity in judiciary that will factor the various axes of marginalization, such as gender, caste, class, ethnic origin, religion, sexual orientation, and disability, and ensure that there is due representation? Also, at this point of time, the real estate, casino, starred tourism lobbies are huge and powerful.

The Goa High Court law will also have to address the systemic sexism and casteism and implicit bias in the judiciary by, for instance, providing for child care facilities for the judges and others serving and attending the Courts, and for systems like a daily board system, codification of the duties of the Chief Justice and the other Judges, collective management of the case allocation roster with criteria for the case allocation, providing for what kind of cases

can be heard before a single Judge, two/three Judge bench, and the full bench. Goa can draw from examples of other State High Court Acts which have sought to address some of the aforementioned matters.

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In setting up an independent High Court, other concerns needing attention include losing out on specialized knowledges that a wider pool of judges of a court as massive as the Bombay High Court can offer. There can be innovative ways of addressing these concerns and thinking out of the box. As was suggested at a recent seminar, organized by the All India Lawyers' Union - Goa State Committee, one can always envisage an arrangement to get the benefit of any external judicial expertise.

Goa has had the envious position of benefitting from various winds blowing through, but in its quest to retain its identity which was fashioned by these very different winds, we need to make sure that the windows are not closed, and at the same time, that the house does not crumble with the cyclonic winds. It is important that we have an Independent court, but one that serves our historical and cultural uniqueness. This will truly bring winds of change in delivering justice to all Goans.

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