

## 60 Years of 'Liberation': The Pressing Need for a Constitutional Contract

The 19th of December 2020 marks the commencement of the sixtieth year since Goa was annexed to the Indian Union, ending Portugal's sovereignty over the territory. To celebrate this moment, the current government of Goa has planned a 100-crore celebration, even while the pandemic, and decades-long mismanagement of the Goan economy, along with corruption and communal politics, have pushed the Goan people to the edge. Against such a backdrop, it is critical that we look beyond the celebratory rhetoric, and focus on the structural problems that were written into India's relationship with Goa right from the start. It is our argument that Goa's 'liberation' may have ended Portuguese sovereignty over the territory, but, due to the manner through which the integration with the Indian Union took place, it has produced a condition of lawlessness that is in no small measure responsible for the unfolding chaos in Goa.

Although the Indian army militarily wrested Goa from Portuguese sovereignty on 19 December 1961, it was not until March 1962 that the Indian Parliament deliberated on the fate of Goa in relation to the Indian Union. The 12th Amendment to the Indian Constitution was then passed, making Goa a part of the Indian Union with retrospective effect from 20 December 1961. However, the people of Goa were not consulted, nor their consent sought, in this critical amendment. In other words, treating the territory as one acquired through conquest, and the residents of the territory as a subject population, the Indian Union established no constitutional contract with the people of Goa. The Indian Union, after 1947, had made contracts with the legal representatives of a number of princely or independent territories—both parties signed an Instrument of Accession consenting to be a part of the Indian Union. Perhaps the most famous was that with Jammu and Kashmir. The result of many of these constitutional contracts was that the specificity of the location was recognized, as in the case of Jammu and Kashmir, but other units of the federation as well. Like Goa, however, there were also many other territories where a constitutional contract was not properly negotiated. This has led to a good amount of conflict, armed or otherwise, the long conflict with the Nagas being one example where a constitutional arrangement is rumoured to have now been reached.

The only option that was made available to Goa was an administrative one. Goans could either remain a separate territory in the federal schema of the Indian Constitution, or merge with Maharashtra. For this, admittedly, a public referendum, the Opinion Poll of 1967, was proposed. But not all Goans were allowed to participate in this referendum. Goans who were resident outside of Goa were excluded. This group included persons resident in Bombay and

other parts of what was now independent India, and also communities in East Africa and Pakistan. These were communities who retained strong emotional and physical ties with Goa, spending summer vacations, finding spouses, and eventually retiring, not to mention kin or extended families who were supported economically.

This decision to not consult the people of Goa in 1961, or to not appreciate their concerns and the peculiarity of their history, would become a pattern over time, and marked the beginning of a flawed relationship with the Indian Union which continues to this day.

### Citizenship Woes

Goans were citizens of Portugal before 1961. This right was acknowledged by Portugal in 1975, and tacitly by India, in the treaty which resumed diplomatic ties between the two countries. India's citizenship law, however, prevents an Indian citizen from holding dual citizenship. India wanted to prevent persons who had momentarily opted for Pakistan from having dual citizenship. Lost in this Partition-centric legal definition was the fact that Goans were *already* Portuguese citizens and were thus being obliged to give up this citizenship if they wanted to remain in their homeland, which was now a part of India. The almost-forgotten case of Padre Chico Monteiro is illustrative of this situation, where, for insisting on holding on to his Portuguese citizenship, the priest was hounded from his employment, then interrogated, prosecuted, and eventually imprisoned in an unknown location and placed in solitary confinement. He was eventually released but on the condition that he would never leave Goa.

In the face of the lack of opportunities in contemporary Goa, a number of Goans have chosen to assert their right to Portuguese citizenship and have hence been forced to give up Indian citizenship. Many have done so under the mistaken assumption that the Overseas Citizenship of India (later surreptitiously reduced to OCI Card holding) will allow them to return home. What has not been realised, however, is that some of the most critical ways to secure their interests in their homeland, and its larger welfare, viz. participation in local elections, and consequently in decision-making processes, and now even articulation of their views and dissent, and the assertion of their rights, have been thus forfeited. The results of this forfeiture were visible in the recent Zilla Panchayat elections, where despite a clear and vociferous public opposition to the BJP government's flawed development plans, as well as to Hindu nationalist politics at the national level, the BJP swept the polls. This victory is now being used to delegitimize the protests. Indeed, in recent times, the current Chief Minister has often taken recourse to dark suggestions that the opposition to his government's developmental schemes is motivated by anti-national foreign hands. In the context of the recent CAA-NPR-NRC complex of legislations, this has the effect of turning many Goans from

the marginalized and minoritized communities, into doubtful citizens, liable to incarceration in detention centres, or reduced to voicelessness.



## 60 Years of 'Liberation': The Pressing Need for a Constitutional

The violation of citizenship rights has in fact plumbed new depths with the arbitrary Contract regulations of the CAA-NPR-NRC complex which also provides for the cancellation of OCI Cards. Protestors in Goa pointed out the specific threats to Goan holders of the OCI. Not only were they obliged to surrender their Indian citizenship for the OCI for merely asserting pre-existing rights to Portuguese citizenship, but they risk being deprived of even this limited right to return to their homeland should they protest, or simply question, the destructive development model, which is increasingly threatening Goan livelihoods and communities.

It is primarily the failure to consider the legal history and opinion of Goans at the time when Goa was integrated into the Indian Union that has resulted in this violation of the most fundamental of human rights, the right to citizenship of one's homeland. Thus, the process of disenfranchising Goans, that began by excluding their concerns and opinions in 1961, has now come to a point where many will be legally deprived of citizenship as well, even as their homeland is used and exploited by every project-touting landgrabber in India.

### Linguistic Suppression

The conflictual circumstances through which Goa was 'liberated' also resulted in the Portuguese language, whose status in Portuguese India was not dissimilar to that of English in British and contemporary India, being seen as inimical to patriotism to the Indian state. In the interests of Indian governance, the administrative language in Goa was switched to English, at considerable cost to the extant legal and administrative culture in the territory. This has led to a variety of complications in the territory. Further, in the context of the manner in which the territory was integrated into India, speaking Portuguese came to be viewed with suspicion, effectively suffocating an avenue of cultural life in the territory as well as in accessing the region's history in the subsequent years and decades.

Like the suspicion of the Portuguese language, and its erroneous association with Catholics alone, Konkani in the Roman script received similar ill-treatment. When Konkani was finally recognized as an official language of Goa in 1987, this recognition was not given to Romi Konkani, even though this more popular form of Konkani has a longer history and a more robust cultural life. The political establishment in Goa, unfortunately, only recognized Konkani in the Nagari script, which, despite enjoying no popular support, was backed by the Brahmanical preferences of the Indian state. The recognition of the Nagari script in 1987 resulted in a long period of the suffocation of cultural and literary production of the Roman script, introduction of a Brahmanical Konkani in school textbooks, and a shaming of those who spoke forms of Konkani that did not correspond to the Brahmanical version now being

propagated throughout the state.



60 Years of 'Liberation': The Pressing Need for a Constitutional Contract

In fact, the question of Konkani took the critical location that it did, in Goa's post-integration history, because of the desperate need to stave off the possibility of merger into Maharashtra. Marathi was claimed by the large sections of the Bahujan Hindu population to subvert the hegemony of the Saraswat Brahmin community by integration into the Maharashtrian polity that was fired by Maratha mobilization. The problem, however, with this Maratha mobilization, which had influence in Goa even under the Portuguese, was that it was mired in Hindu nationalist imagery, a feature that has continued to mark and mar communal relations within Goa.

The absence of a proper constitutional contract directly impacted Goa's language politics. While the Portuguese state in Goa had recognized several languages, including Marathi, the requirement of Brahmanic or Sanskritic forms of linguistic expression within the Indian Union, allowed the local dominant castes in Goa to push for linguistic reforms that excluded popular forms of linguistic expression. In this scheme, the Catholic subaltern groups suffered the most, as many Hindu Bahujan groups could take recourse to Marathi (for government jobs) and participate in a pan-Indian Hindu identity.

### The Contemporary Mess

Today, as the government of Goa shamelessly indulges in a 100-crore celebration of liberation, the repercussions of not having a proper constitutional contract have assumed alarming proportions. In the absence of a contract, Goa's relationship to the Indian Union post-1962, only furthered a colonial process of exploitation started by the Portuguese state. For instance, the Indian Union simply continued the resource extraction, such as iron ore mining, that was started by the colonial Estado Novo. Lured by the prospects of tax receipts and securing the interests of a comprador elite, the Indian Union kept allowing the renewal of mining leases and concession without any proper entitlement, documentation, or due process. The concessions continued for years in the name of even dead persons, until the whole mining imbroglio erupted following public anger at the extensive illegal extraction, or extortion, of Goa's resources from the custody of the people. This is well documented in the Justice M. B. Shah Committee report.

This colonial process of extraction was also followed in the establishment of the tourism industry, that other great cash cow for the Goan economy. While mining exploited the Goan hinterland, tourism was the state's colonial response to the Goan coastlands, through which it generated a comprador class, and opened up Goa as a pleasure periphery for Indians. The result of the representation of Goa as the tourist capital of India, has ensured Goa and Goans are subjected to a colonial gaze by average Indians, seen as a place and people for whom

rules do not matter, and where anything goes. This has created a culture of the subversion of the rule of law in the state. To complicate matters further, even though both these industries rest on exploiting fast depleting natural resources, Goa's economy has remained overly Contract reliant on them, instead of sustainably leveraging these industries, and diversifying the economy beyond tourism and mining, thus forcing the migration of scores of Goans looking for dignified employment.

The colonial structure of the mining and tourism industry in Goa, and the degree of dependence on these industries was severely felt in the recent lockdown that curbed people's movement and impacted tourism, in addition to the near ban on mining implemented in Goa since the last few years. This situation plus the fact that the only way forward being projected by the government is investment in even more unsustainable 'development', can be directly linked to the mass protests or outrage that have sprung up in the course of the last one year over the following reasons: a) the exclusionary nature of the Citizenship Amendment Act, 2019, b) the complete glossing over of the right of Goans- seen as people who abandoned their homeland and possibly also citizenship - to return home upon the onset of the pandemic and who remained literally at sea, because their return was not a priority as compared to the Vande Bharat Mission, c) the treatment of migrant labour working in Goa as captive labour, where the interests of capital took precedence, d) the lack of access to basic amenities and facilities for Goans during the pandemic, e) the proposal under the Major Port Trust Authorities Bill, 2020, to exclude people, particularly communities from 53 kms of Goa's coastline from having any say on development along this substantial stretch of coastline, and f) the foisting of destructive and/or wasteful projects in the name of development, such as the Konkan Railway line and the projects through the Mollem forest reserve.

Instead of listening to the legitimate demands of the people of Goa, the State has behaved dictatorially and been guilty of acts of both commission and omission. It has responded directly with the arbitrary imposition of Section 144 Criminal Procedure Code, and the dangling of Section 188 Indian Penal Code, in an attempt to crush expressions of public dissent, and indirectly through dissemination of false propaganda to create divisiveness in protests. It has also failed to comply with obligations to prioritize the fundamental rights of equality, life and livelihood, freedom of speech and expression, and the freedom to practice any occupation or profession of one's choice. As a result, on the one hand, corruption scandals such as the labour scam have surfaced where the rights of migrant labour have been compromised, and on the other hand, Goans - domestic workers, traditional artisans like roof-tilers, and subsistence-level professionals and businesses - have not been provided any social security, nor has there been a waiver of fees for small industries. This even as the Goa Cabinet has cleared the waiver of Rs. 277.08 crores for casinos as what they call a

‘temporary measure’, and allowed a further relaxation of the annual recurrent fee to be now paid in monthly instalments. No such concessions have been available to small and subsistence-level businesses. The latest in the State’s actions is ‘preventive detention’ of youth, including minors among others, who were expressing or intending to express their visions of liberation in scattered groups at the Panjim Church steps and other parts of Goa as part of their commemoration of Goa Liberation Day.

### The Critical Need for a Proper Constitutional Contract

When it comes to policies and projects initiated and promoted by the Central Government, the Goa Government lacks clout and influence to stop them. Since federating units of the Union enjoy no substantive legal right within the existing Constitutional federal set up, there is no route for Goa’s elected representatives to raise this matter with the central government, except through the political goodwill that the Goa Government may possibly enjoy with the ‘Centre’. This goodwill is especially pronounced when the governments at the State and the Centre are occupied by the same political party. But even this is not working, if one goes by the claims of the Chief Minister that matters have indeed been put up to the Centre. Goa’s size and consequently a representation by just two Members of Parliament in the Lower House and one member of Parliament in the Upper House – is of little use, with a majoritarian and autocratic Central Government for whom Goa’s numbers are inconsequential and which anyway has been pushing through major reforms like the new Farm Laws while bypassing Parliament. Even a resolution passed in the Goa Legislative Assembly expressing the desire for special status for Goa, when the Bharatiya Janata party whose coalition was ruling in Goa and at the Centre, did not count.

It is not as if these problems have not been recognized or raised earlier. On the contrary, Goa’s relationship with India has been a steady cause of concern for Goans since ‘liberation’, and various solutions have been attempted as the circumstances permitted. The first was the attempt at ensuring physical integrity through the Opinion Poll in 1967, this was followed by the demand for Statehood which was achieved in 1987. When it was revealed that Statehood did not resolve the problems, Special Status was proposed as a solution. However, as indicated above, this solution has not been successful, and perhaps it was just as well for the proposed Special Status was the wrong solution to the right problem. Not addressing the larger issues of Goa’s relationship with India, and the founding violence which prohibited Goans from establishing a valid Constitutional contract with India, Special Status was formulated around the question of ownership of land, and proposed that only Goans be able to own land. This proposal, however, looked only after the interests of landed groups and would not have resolved the myriad problems that the Goan people are faced with. Rather, it would have given local elites more muscle power to dominate the subaltern groups in the



state. Indeed, tailoring the solution to suit the interests of local elites – as was the case with Konkani and statehood – has complicated the crisis. For example, statehood in its prevalent form cuts Goans off from their legal roots, and separates Daman and Diu from Goa, to the detriment of all three territories. Or take the fact that every state-level mobilisation in Goa, which seems to have taken place in an interval of twenty years, has mobilised the energies of the working castes and classes, but left them without substantial gains.

A valid Constitutional Contract, therefore, must necessarily begin from the recognition of the pre-existing right of Goans as citizens of Portugal and their simultaneous right to have a say in the electoral politics of Goa and of India into which Goa is now integrated. It needs to be stressed that this recognition does not negate the rights of persons settled in Goa since 1961. On the contrary, such an arrangement returns to the spirit of the electoral options that were recommended by Dr. Ambedkar prior to Indian independence. The Constitutional Contract will also have to recognize the legal history of Goa and respect its autonomy, allowing for a genuinely federal relationship. Recognising Goa's limited presence in the national parliament, this must be translated to a limitation on the Central Government's power to decide how Goan resources will be used; and an obligation on the Centre to seek the consent of the people of Goa for all developmental projects, however small or large. This consent can best be obtained through re-articulation of the existing electoral system within the state. The first-past-the-post system is at the root of the lack of representation in the Goan legislative assembly, and must make way for a more dynamic electoral system. Given Goa's small size and history, it is absolutely necessary that we have a legal framework that would enable Goans to determine what works as development for a small state like Goa with its diverse composition and issues, and which will not treat Goa simply as a corridor, or assign the very existence of Goa to history. Finally, a proper Constitutional Contract will ensure, no matter what kind of government is in power, that the will and consent of the peoples of Goa will always be paramount.



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