



By JASON KEITH FERNANDES

## Portuguese Citizenship and the Debugging of Indian Imaginations

I read with interest the recent opinion piece “The Portuguese nationality bug” on the vexed issue of the rights of Portuguese Indians to Portuguese citizenship and was disappointed by the author’s refusal to see the larger picture. I suspect that this is because the author seeks to resolve the question within the narrow frames of Indian nationalism. As a result, the argument forwarded in the op-ed seems to buttress the rights of the state over those of citizens. Such legality will only strengthen the growing authoritarianism of the Indian state over subjects who, while formally citizens, increasingly lack the space to realize this condition.

In the opinion piece citizenship is presented as a *status* that is conferred by a state. This is not only a peculiarly lawyerly perspective but also a dated idea. Unsurprisingly, the argument refers to a judgment of the US Supreme Court from 1875. The wider field of contemporary citizenship theory recognizes that citizenship is more than a status, rather a condition to be realized. In these more recent understandings, as evidenced in the Universal Declaration of Human Rights (1948) for example, rights are not conferred by a state, but inhere in the individual. Even the Indian Constitution recognizes that it is the people who constitute the state as evidenced in the famous lines of the preamble “We the People of India....” Thus, a post-colonial political theory recognizes that states are actually constituted by the people, which formally recognize the rights of people. With the passage of time as our appreciation of the depths of rights grows, states are required to recognize these evolving rights. Indeed, this was very much the case with India as well when from about the 1950s the existing fundamental rights were dramatically expanded through the interpretations offered by the Supreme Court.

Of the many rights that inhere in individuals, surely the right of citizenship is the most fundamental. If there was one single right that the anti-colonial nationalist movements fought for, it was the right of citizenship. As in the case of British India, the initial demand was for the right to imperial citizenship, and it was only because the British, hobbled by a racist imagination, failed to recognize this right, that the Indian nationalists pressed forward for a national citizenship.



Citizenship must necessarily be distinguished from nationality. These are two distinct concepts and must theoretically be kept separate. While citizenship involves a gamut of rights that allow one to be a political subject, nationality is the status of belonging that the nation confers on some individuals, and restricts from others. This is to say, the first deals with rights, while the second is the realm of cultural belonging. One of the reasons why the debate on the Portuguese Indian rights to Portuguese citizenship is so vexed is because the various parties fail to recognize the fundamental differences between these two concepts. This is obvious even in the opinion piece where there is a constant switch between the terms nationality and citizenship as if they were the same.

This failure is not surprising given that the nation-state form that has been taken up across the world purposely seeks to conflate the concept of the state and the nation. The famous philosopher Hannah Arendt refers to this as “the transformation of the state from an instrument of the law into an instrument of the nation”. Taking up this idea, other scholars have pointed out that “It was this conquest that defined citizens of the state as nationals whether defined racially, ethically, culturally or even religiously”. There is, in fact, no good reason for the two concepts to be conflated. A state can compromise multiple nations, while nations need not have a state. Take the case of Belgium, which is composed of people that identify with two different nationalities, the Flemish and the Walloon. Or take India, which can be said to comprise different nationalities, but refuses to recognize, and in principle rightly so, that each of these nations needs its own state. Indeed, the foundation of the contemporary international order as an association of nation-states can be traced back precisely to the racist imaginations of the colonial order. To this extent, the assertions of Portuguese Indians to retaining their Portuguese citizenship while also accepting that of India stands to offer the world a model in terms of post-colonial citizenship precisely because it is born of an early modern experience that differs dramatically from the colonial experience rooted in late-modernity.

What does come out in striking clarity from the argument in the opinion piece referred to above is the legal position of the former citizens of Portuguese India in the Indian republic. In addition to the legal formulation that the argument the op-ed relies on, and the military action of 1961, this population is not a liberated population able to act on equal footing with other individuals from British India, but in fact a subjugated population whose “rights” depend on what the State of India grants them. The noted philosopher Partha Chatterjee has

recently articulated a concept of political society that addresses precisely this point. He argues that not all who are formally recognized as citizens enjoy rights. Chatterjee suggests that these people are members not of civil society, but political society. Members of political society do not enjoy rights, which are permanent and inhere in the individual; they are merely extended temporary concessions when these excluded groups challenge the status quo. Once the status quo is secure these concessions can and often are revoked.

Reading the argument in “The Portuguese nationality bug” in the context of this framework, given that the citizenship rights of Portuguese Indians seem to depend on the whims of the Indian state, one can see that what the Portuguese Indians enjoy are not rights that inhere in the individual and are not granted by the state, but merely temporary privileges that can be, and are, rolled back when the State feels like. The privilege of Indian nationality was extended to these groups when the Indian state needed to consolidate its hold over the newly conquered territories creating the mirage of extension of citizenship when in fact the recognition of their pre-existing rights is what would have constituted acceptance into Indian civil society. It needs to be noted that this is not the position of the Portuguese state that recognizes the continuing rights of citizens in territories over which it formerly claimed sovereignty.

The argument also fails to appreciate the federal nature of the Indian Union, a vision that is embodied in the Constitution. The Indian constitution patently allows for a diversity of legal regimes within the Indian Union. Take, for instance, Art. 370 of the Constitution that allows for Kashmir to have its own constitution. This particular article is the subject of much vituperation but the fact is that such resentment against Art. 370 has been the result of Hindu nationalist opposition. Ironically it is Hindu nationalism which is contrary to the constitutional mandate. Art. 370 must therefore be seen as embodying the basic structure of the Indian constitution that makes space for a federal structure that incorporates widely different polities within a single structure. Consider also the fact that Buddhist monks and nuns in Sikkim get a double vote to ensure the representative of the Sangha in the legislature. This argument for legal pluralism can also be buttressed by reference to the reports on the conclusion of the Indian state’s negotiations with the Naga activists. Though the terms of the agreement are still secret, if a dubious news report is to be believed it appears that the Indian state, under Prime Minister Modi, has agreed to the Naga demand for a separate Constitution, as well as a separate flag. Such an agreement, if true, would testify to the capacity of the Indian Union to accommodate legal difference within a single federal



A resolution of the question of the Portuguese citizenship of denizens of the former Portuguese India could contribute to the failing health of the Indian Union. It would allow an assertion of the dignity of the rights-bearing individual in opposition to asserting the right of a potentially tyrannical Indian state. It would contribute to the constitutional imagination of a federal India, an imagination that has unfortunately been undermined by the desires of Hindu nationalists and successive central governments.

For a long time the question regarding the legitimacy of Portuguese Indians holding on to both Portuguese and Indian citizenship is being debated in a dry and inspired manner. Given that the question is admittedly complex, the resolution cannot be obtained through a niggardly attention to the letter of the law. Rather, what is required is a reference not merely to the spirit that animates laws, but to the larger questions of postcolonial justice and the rights of individuals, this is to say a reference to political theory and the philosophy of law. What is required is not a debugging of Portuguese nationality, but Indian imaginations.

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