



By ALBERTINA ALMEIDA

## Reflections on Republic Day

Come Republic Day and an apparent prevailing disregard for the Constitution becomes an occasion to stock take and introspect.

Earlier this year, the Supreme Court came down heavily on tendency of re-promulgation of ordinances. The apex court reasoned that this can amount to a fraud on the constitution, when an edifice of rights is built by subverting due legislative processes. It termed it as legislative overreach.

Leave alone re-promulgation of an ordinance, even an ordinance is required to be promulgated under exceptional circumstances, as it signifies a departure from the basic constitutional order. In this also, Goa did not lag behind. The Goa Regularization of Unauthorised Construction Ordinance, was promulgated on 24th June, 2016, without any coherent reason for not waiting for the matter to be discussed in the Assembly.

A disturbing development is the accentuation of how 'difference' is being treated or deployed. The Constitution of India considers that to treat individuals located differently on the social and economic spectrum, the same way, would be to treat them unequally. But the ruling dispensation does exactly this: it treats differently located people the same way resulting in inequality.

People in an unequal situation cannot be treated the same way. Writing in 1894, French novelist Anatole France had sarcastically remarked, "The law, in its majestic equality, forbids the rich as well as the poor, to sleep under bridges, to beg in the streets, and to steal bread". Fast forward to November 2016 and there is still a basis for articulating such sarcasm, despite a Constitution that upholds the principle of substantive equality. Prime Minister Modi announced, in the aftermath of demonetisation, that "this (meaning demonetisation) move has brought the rich and the poor on the same tangent". He completely missed the point that the rich can negotiate tangents with their financial clout, while the poor cannot. For instance,

the rich could swipe their cards at malls, while the poor were cashless, cardless and even shirtless. The small vendor has been struggling with her business, which is not something the rich businessman (such as a mall-owner) would have to endure.

Another disturbing aspect is how 'difference' is deployed to imply that Goa may not need the special provisions focussed on addressing the discrimination based on difference. Even recently, at a youth convention in Goa, former Chief Minister (and currently India's Defence Minister) Manohar Parrikar blew hot and cold stating that "though the situation in Goa is different, the social condition of SC and ST people across the country is not good". Again completely missing the point that the reservation policy mandated by the Constitution, is grossly violated by the State in Goa. And as if this was not bad enough, even the wings of Commissions statutorily set up to monitor the enforcement of rights of marginalised sections, are clipped by a mere executive order when they choose to act on their respective mandate. As has most recently been the case with the Goa State Commission for Scheduled Castes and Scheduled Tribes, which has been told in no uncertain terms that it has no jurisdiction to look into denial of constitutional protection in service matters, after some persons began to tap the potential of the Commission for redressing denial of reservations.

It seems that Goa's difference has over the years been projected to its disadvantage. It was the basis, for the Parliament not extending the Dowry Prohibition Act, 1961, suggesting that Goa's women are not afflicted by the problem of dowry because Goa has a uniform civil code, where sons and daughters have equal rights to parental property. As if the uniform civil code has a correlation with the incidence or lack of incidence of dowry demand and dowry related harassment. Thus they made having the uniform civil code a reasonable classification for denying Goa some of the laws enacted in the rest of India to address women's issues. It took a lot of persuasion by the women's movement in Goa to get the law finally extended over three decades later.

Same with the acknowledgement of the existence of child sexual abuse and other crimes. The State has always tried to shirk responsibility by denial or by making odious comparisons. Ditto with the existence of AIDS in Goa. In these cases, the myth of difference - of being peaceful and safe, was sought to be deployed to cover up the existence and consequently to deprive the local population of appropriate measures of redressal.



Why, after reneging on last time's poll promise of special status, as reflected in its 2012 election manifesto, the BJP's Chief Minister Laxmikant Parsekar now says that Goa cannot get special status as it tops on all fronts. The arguments of a different history and connected consequences for citizenship, including holding of agricultural property and voting rights, as the rationale for a special status, are quietly swept under the carpet, not even considered.

Thus we see that difference is either not recognised, or the discriminatory attitude to being differently located in or vis-à-vis power, works negatively, but positive discrimination has rarely been the privilege of those in Goa who deserve it most.

Or where the difference is recognised, Goa and its people are commodified, used and abused. Everyone in Goa, it seems, has to remain content with Goa being referred to as a mole that lends beauty to the nation. Amit Shah in his recent visit reflected the spirit in which dominant India, including the ruling establishment, looks at Goa. Different and commodified, for selfish motives of a select few.

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