




It is now exactly a month since the effective abrogation of Article 370 of the Constitution of India, the article which acknowledged the federal autonomy of the state of Jammu and Kashmir as well as the federal nature of the Indian polity. It has been a sad and painful month for the Union of India, and we can only condemn the continued suffering and humiliation of the people of Kashmir—including the mass arrests, heavy curfew, communications shutdown, and an increased militarization of an already heavily militarized region subsequent to the decision of the government.

In this context, we would also like to look at the issue of federal autonomy from the location of Goa. At this juncture, it is important to recollect that India is a union of states with varying legal histories. Article 370, which enshrines the specificities to the state of Jammu and Kashmir, is a recognition of this political diversity. Goa, like Kashmir, has a unique legal history. Unlike Kashmir, however, Goan specificities did not merit any constitutional recognition. Subsequent to the annexation of the territory, Goans were not asked, via a plebiscite, what they wished their political status to be, nor was a Constituent Assembly set up, as was the case in Kashmir and some of the other princely states in the process of accession to India. India simply asserted its power and extended its Constitution to Goa, and erased pre-existing citizenship. Any negotiation that took place occurred under an unequal arrangement of power, where the Goan people had, and continue to, struggle to defend their unique history and status. For instance, rather than a plebiscite, what the national government offered was merely an 'Opinion Poll', years after the first local government under Indian sovereignty was already elected in Goa. This poll merely allowed for the people of Goa to determine whether the territory be attached to Maharashtra or maintain its territorial integrity. Further, the poll excluded those Goans who were resident outside the state while including Indians who had been resident in the state for a brief period of six years since integration.

As evidenced in the famous words in the preamble to the Indian constitution "We the people of India..." a constitution is the document which enshrines the social contract through which the people constitute the state. The keyword to understand the present political crisis and the diverse legal histories over the last fifty years, therefore, is 'constitutionally-mandated contract'. Citizens of the state of Goa have existed within the Indian Union *without* a constitutional and contractual recognition of their legal history or sovereignty for more than five decades now, and have consequently been witness to the disregard of their rights and the resulting impact on their livelihoods, perhaps best represented in the steady degradation of their lived environment. Article 370, even though acknowledged more in its violation, asserted the Constitutional recognition of the rights of the citizens and sovereignty of Jammu

 & Kashmir and thus their contractual and constitutional participation in the Union of India. In other words, Article 370 was a product of a constitutionally-sanctioned contract between the state of Jammu & Kashmir and the Union of India, which was affirmed by the Constituent Assembly of Jammu and Kashmir as permanent, as reflected in Article 147 of the Constitution of Jammu and Kashmir, 1957.

Recognizing the citizenship rights of Goans, just like Kashmiris and Nagas, is critical because these rights were hard-fought for across generations. The citizenship rights of the residents of the former Estado da Índia – today popularly understood as the right to hold a Portuguese passport – were the result of the realization of Goan demands since at least the mid-eighteenth century. These socio-legal histories are often forgotten because it is the history of British India, and that too the north of British India, that dominates the national narrative and through which the Indian Constitution tends to be interpreted. That the efforts of elite (or dominant-caste) nationalists in British India alone is recognized and the efforts of non-elites and peoples outside British India, are either negated as in the case of Kashmir, or simply denied, as in the case of Goa, is unfortunate and unconstitutional.

Residents of Goa (and the rest of the former Estado da Índia) were citizens of the State of Portugal at the time of Indian annexation of the territory. Even though the right to citizenship is internationally acknowledged as a fundamental human right, the same right was taken from the people of Goa (and other Portuguese Indians) who are required to renounce their Portuguese citizenship should they wish to continue to reside, and have full political engagement, in the land of their ancestors. But pre-existing citizenship, and consequently dual citizenship, need not be contrary to the citizenship in the Indian Union. Indeed, it can be complementary within the limits of the Constitution of India and the federal nature of the Indian polity.

Though never articulated as such, the lack of due process in the integration of Goa into the Indian Union has haunted Goan politics ever since. Given that Goa's territorial integrity was not recognized by the Indian state and there were attempts to integrate the territory into the state of Maharashtra, Goan politics has seen attempts to defend its integrity in the Opinion Poll in 1967, and subsequent attempts to become a state of the union, which achieved success in 1987. Central to the efforts at securing territorial integrity were the attempts to present Konkani as the common language of the Goan people. While Konkani was eventually given this status, along with Marathi, it was at the cost of negating the older variant of the language in the Roman script, used largely by Catholics, effectively producing these Catholics as second-class citizens in Goa and, by extension, India. In other words, the question of internal democracy, or relationships within Goa, remains unresolved as a result of the lack of external democracy, i.e. Goa's unequal relationship with India.

The fact that there are movements in Goa that demand Special Status for the state is evidence that much more needs to be done with Goa's legal relationship with the Indian Union. Those who claimed that the developmental benefits that will follow the recent actions in Kashmir will negate the illegality of the government's actions have already been answered by official figures showing that Kashmir has a higher human development index than many Indian states, including Modi's own Gujarat. But they would do well to also bear in mind the Goan experience: a post-1961 decline in human development, for instance, the positive sex ratio prevailing in Goa has declined over the decades following Goa's integration in the Indian Union.

One of the effects of the failure to secure the rights of Goans has resulted in the viewing of Goa as a piece of real-estate, a process that began from the very moment of integration into the Union, and one that has gathered furious pace in recent times. Fueled by Bollywood films, Goa, like Kashmir, is seen as a paradisiacal location where rules do not apply and persons from other parts of India can play out their fantasies. The Bollywood-peddled fantasies also fuel a commodification of women, as is obvious by the widespread idea that Goan women are "loose". That women are seen as property is disturbingly visible by the statements of a number of BJP legislators who see the effective abrogation of Article 370 as an opportunity to access Kashmiri women.

Goans, like Kashmiris under the protection of Article 370, would do well to restrict the sale of land to those from outside the state, a right, it should be noted, that is also guaranteed to some other states in the Indian Union. Goan activists supported by politicians have raised the demand for constitutionally-mandated Special Status, recognizing that Goan land is being wholesale appropriated, grabbed and bought by capitalists, both Indian and global, and, consequently, that controlling the sale of land to non-Goans could be one way to halt the degradation of the environment and local communities. The power of the discourse of Indian nationalism, however, is so strong that, except groups like the Movement for Special Status, official demands have always stopped shy of asking for a constitutional provision or contract similar to Article 370 or 371.

As the growing responses from various parts of the country demonstrate, the recent action of the central government has, possibly irreparably, challenged the unity of the country, besides grossly undermining the citizenship rights of the people of Kashmir, along with Jammu and Ladakh. While it is difficult to predict the future effects of this move right now, it needs to be affirmed that a united India can only follow an embrace of the federal principle and right to plebiscites that is best suited to the diversity of the various states and peoples who constitute the Indian Union. It will definitely not be secured through the brute enforcement of centralization and cultural homogeneity.



Goa and the Union of India: Lessons from Article 370

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