

DELIMITATION: THE RUSH FOR SEATS

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ABSTRACT

After India's independence, the country witnessed an extensive redesigning of its internal territory. This internal reorganization of the country into subnational states on cultural and linguistic grounds truly established India as a federal democracy. With seemingly incongruent states spanning across the length and breadth of the country, India, the experimental democracy, is held together by the glue of cooperative federalism. India's cooperative federalism, like most popular federal democracies, employs the principle of 'one man, one vote' to ensure political equality and proportional representation. However, over the past few decades, this glue of cooperative federalism has been drying out due to growing disparity between states, differential growth of state populations et al indicating an expanding fissure between India's states. The only constitutional tool to remedy this is the decennial practice of 'delimitation' that helps revamp electoral districts or constituencies in order to even out the disproportionate population growth of different regions. Despite being a decennial process, it has been reduced to a once in a blue moon phenomenon contingent on the will of politicians who have been majorly averse to the idea of reallocating parliamentary and state assembly seats. The current Lok Sabha and State Assembly strengths were determined by the 1971 Census, which shows that there will be a lag of 60 years before the next delimitation procedure, assuming the Parliament does not pull off another dangerous stunner as it did in the past (1976 and 2002). Thus, there is an urgent need to repair this incumbrance instead of delaying it and deteriorating the already worsened situation. By means of the present essay, the author studies the existing literature on the evolution of the process of delimitation in India. Further, the author presents a holistic analysis of the impending situation and the issues arising from it. Lastly, the author proposes plausible solutions vis-à-vis India's commitment to champion cooperative federalism.

Keywords: Cooperative federalism, delimitation, federal democracy, one man one vote principle, re-allotment of constituencies.

INTRODUCTION

The journey of India from 1947 to the present has gone through several episodes of chaos and order. From being a mosaic of princely states before its partition in 1947; to being an *avant-garde* federal democracy after its independence that led to its internal reorganisation into subnational states on linguistic and ethnic grounds; to briefly having suspended democratic rights and then its return to democracy; India can be, at best, described as a canvas of disparate states, that has been held together by the adhesive of cooperative federalism. However, over the last decades, this adhesive has been drying out due to the growing disparity between states, unequal political rights of individuals belonging to different constituencies (owing to different state population growth rates), differential allocation of wealth¹, and therefore the wealth

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1 'Finance Commission - A Historical Perspective' (*Finance Commission of India*) <<https://fincomindia.nic.in/historical.htm>> accessed 30 September 2021.

gap. These inequalities raise questions about India's federal structure and create a potentially explosive wedge between the country's leading and laggard regions.²

The theoretical premise on which the edifice of federal democracy rests is 'one man, one vote'.³ It means that one person's vote should count as much as that of any other.⁴ This ensures political equality and proportional representation in any democracy. Therefore, to this phrase, one may add - 'one man, one vote, one value',⁵ thereby reasserting the same principle albeit more intrinsically. To maintain equal political representation, electoral districts or constituencies of equal population size are created. Initially a decennial process, delimitation of constituencies has now been reduced to a rare phenomenon owing to the unwillingness of politicians to reallocate parliamentary and state assembly seats to accommodate the country's expanding demographic.⁶ With every passing decade, this representation crisis is only worsening. There is a need to 'pull off this band-aid'⁷ immediately instead of delaying and increasing the tension. The author under Part I of the essay, studies the existing literature on the history of the process of delimitation in India; under Part II, analyses the present situation and the issues arising from it; and under Part III, submits plausible solutions *vis-a-vis* India's commitment to champion cooperative federalism.

ESTABLISHING REPRESENTATIVE DEMOCRACY IN FEDERAL INDIA

At a unitary level, elections in federal democratic countries based on territorial constituencies. The boundaries of these electoral divisions are readjusted periodically to ensure equality in political rights. Technically, delimitation can be defined as the drawing and redrawing of electoral boundaries of constituencies to divide the population in an equitable manner.⁸ In a federal state, the process of delimitation is more nuanced than in a unitary state. A federal nation- state comprises smaller political divisions like states or provinces. Thus, delimitation of constituencies in such nation-states includes: i) proper allocation of seats of the national legislature to various sub-states or provinces in a way that the seat to population ratio is comparable;⁹ ii) drawing and redrawing of the electoral boundaries of the states or

2 Milan Vaishnav and Jamie Hinton, 'India's Emerging Crisis of Representation' (*Carnegie Endowment for International Peace*, 14 March 2019) <www.carnegieendowment.org/2019/03/14/india-s-emerging-crisis-of-representation-pub-78588> accessed 30 September 2021.

3 KC Sivaramakrishnan, 'North South Divide and the Delimitation Blues' (2000) 35(35-36) EPW 3093.

4 R Chandidas, 'Changing Geography of Representation: Parliamentary Constituencies From 1951 to 1966' (1968) 3(41) *Economic and Political Weekly* 1581

5 T Ramakrishnan, 'One Man, One Vote, One Value' *The Hindu* (Chennai, 3 April 2011) <www.thehindu.com/news/national/tamil-nadu/One-man-one-vote-one-value/article14669219.ece> accessed 30 September 2021.

6 Vaishnav and Hinton (n74).

7 *ibid.*

8 AK Verma, 'Issues and Problems in India's Delimitation Exercise' (2002) 63(4) *The Indian Journal of Political Science* 371.

9 *ibid.*

provinces in an equitable manner such that there are as many electoral constituencies of equal size and population as the number of elected representatives of national legislature allotted to the respective states or provinces¹⁰.

Delimitation is a process that upholds the 'one man, one vote' principle by preventing 'over-representing or under-representing representatives. It maintains the population to seat ratio across states so that every person's vote is equal. Periodically performing the delimitation exercise ensures proportional representation by introducing changes to the electoral system. Notably, delimitation of constituencies is provided for by the Constitution of India.¹¹ The first mention of this principle can be traced back to B.N. Rau's memorandum to the Union Constitution Committee to which he had proposed that '*there should not be less than one member for every million of the population and not more than one for every 750,000 of the population.*'¹² Here, it must be noted that B.N. Rau's memorandum and other notes assume significant importance while discussing constitution-making as his works laid the foundation on which representative democracy in independent India rests. That said, the mentioned quote should be followed in spirit, altering the numbers to suit the changing demography of the country.

The spirit of this proposition was not opposed, however, the numbers mentioned were brought down to a maximum of 750,000 and a minimum of 500,000.¹³ While the population explosion in India continued in the second half of the 20th century, it was becoming increasingly difficult to adhere to these limits and thus Article 81 of the Constitution was amended in 1956.¹⁴ Article 81(2) now reads the constitutional requisites of allocation of Lok Sabha seats:

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

*(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.*¹⁵

This provision ensures that there is equal distribution of political power to the voters as well as hinders gerrymandering.¹⁶ Moreover, the Constitution also provides for the reservation of parliamentary seats for the Scheduled Castes and Scheduled Tribes under Article 330:

¹⁰ *ibid.*

¹¹ The Constitution of India 1950, art 82.

¹² BM Sharma, *The Republic of India: Constitution and Government* (Asia Publishing House 1966) 267.

¹³ Chandidas (n 76).

¹⁴ The Constitution (Seventh Amendment) Act 1956.

¹⁵ The Constitution of India 1950, art 81(2).

¹⁶ Chandidas (n 76).

*The number of seats reserved in any State for the Scheduled Castes or the Scheduled Tribes [...] shall bear, [...] the same proportion to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.*¹⁷

State Assembly seats are also reserved for the SCs and the STs under Article 332¹⁸ of the Constitution. Apart from allotting seats to states and communities, the Constitution, under Article 82,¹⁹ also allows for periodic readjustments to the seat share of the states as per the decennial census. Apart from the Constitution, there is no legislative document that provides for delimitation. The Delimitation Commission Acts²⁰ (D.C. Acts) only lay out the rules governing the process of delimitation.

Delimitation Commission have been set up four times - 1952, 1963, 1973 and 2002 under D.C. Acts of 1952, 1962, 1972 and 2002, in the last seven decades. After the delimitation of constituencies in 1973, then Prime Minister Indira Gandhi suspended this exercise in 1976²¹ during the national emergency imposed by her. The 42nd Constitution Amendment Act of 1976²² had put a freeze on the delimitation exercise till 2000. The reason cited for this was that by 2000 the states would control their population after the implementation of Gandhi's family planning programme²³ and would achieve similar population growth rates ensuring similar Lok Sabha representation. However, it is to be noted that the freeze was applied to the delimitation of State Assembly seats as well.²⁴ Though the population theory justifies the freeze on the delimitation of Lok Sabha seats, it fails to explain the latter. Regardless, the delimitation of 1981 and 1991 was thus stalled.

While everyone was expecting that fresh reallocation of Lok Sabha and State Legislative seats would be the agenda for the 21st century, the Parliament played another bluff by allowing only for partial delimitation and further stalling the process till 2026. The 84th Constitution Amendment Act of 2001²⁵ put a freeze on the number

17 The Constitution of India 1950, art 330.

18 The Constitution of India 1950, art 332.

19 The Constitution of India 1950, art 82.

20 The Delimitation Act 2002.

21 Ritika Chopra, 'How States Are Split Into Seats' *The Indian Express* (New Delhi, 19 August 2019) <www.indianexpress.com/article/explained/jammu-and-kashmir-delimitation-election-commission-jk-special-status-bifurcation-5915697/> accessed 30 September 2021.

22 The Constitution (Forty-Second Amendment) Act 1976.

23 J Santhosh, 'Omission and Commission' *The New Indian Express* (Chennai, 29 September 2019) <www.newindianexpress.com/states/tamil-nadu/2019/sep/29/omission-and-commission-2040633.html> accessed 30 September 2021.

24 KC Sivaramakrishnan, 'Constituencies Delimitation Deep Freeze Again?' (2001) 36(51) *Economic and Political Weekly* <www.epw.in/journal/2001/51/commentary/constituencies-delimitation.html> accessed 17 December 2021.

25 The Constitution (Eighty-Fourth Amendment) Act 2001.

of Lok Sabha and State Assembly seats till 2026. As per this, the next delimitation can only occur after 2031, as the Census is a decennial exercise. It is safe to assert that the 42nd and 84th Constitution Amendments have together deferred the reallocations of the number of representatives to the Parliament and the State Assemblies for six decades. The 2001 Delimitation Commission²⁶ allowed three activities - i) the readjustments of the division of Parliamentary constituencies, ii) readjustments of the division of State Assembly constituencies, and iii) re-allotting SC and ST Parliamentary and State Assembly seats using the 1991 Census data. Later, the 96th Constitution Amendment Act of 2003 amended the 84th Amendment Act and the D.C. Act of 2002 to make the 2001 Census data the basis for the delimitation exercise. This was the first time in the history of delimitation in India that the exercise used two sets of data - Census figures of 1971 (for allocation of Parliamentary seats to the States and State Assembly seats) and Census figures of 2001 (for redrawing constituency boundaries and allotting Parliamentary and Assembly seats to SCs and STs).

The next test of India's cooperative federalism is to happen after 2026²⁷ when the existing freeze will be melted, and the current framework of delimitation will end.

INDIA'S EMERGING REPRESENTATION CRISIS

In a federal state with as diverse components as in India, equitable if not equal representation of each one of them is the key to enabling cooperative federalism, where disparity needs to be reduced between different sub-states and not just between the centre and the state(s). There have been recent instances when the country encountered serious stresses in cooperative federalism, with strained state-centre, and interstate relations²⁸ - for example, the interstate migrant workers crisis²⁹ during the first wave of the COVID-19 pandemic.³⁰ Another instance is during the initial months of the lockdown, which was announced by the central government, the country was divided into zones - green, orange and red, depending on their situation.³¹ This classification was done by the centre with no participation of the

26 Verma (n 80).

27 Ajit Ranade, 'A Two-Third, One-Third Problem of Indian Federalism' (*Livemint*, 7 September 2020) <www.livemint.com/opinion/columns/a-two-third-one-third-problem-of-indian-federalism-11599492083992.html> accessed 30 September 2021.

28 Roshan Kishore, 'The Shifting Dynamics of Centre-State Relationship' *Hindustan Times* (24 Jan 2020) <www.hindustantimes.com/india-news/the-shifting-dynamics-of-centre-state-relationship/story-f3BoA7Y6yq0xjQgLmrmBVJ.html> accessed 02 February 2022.

29 Pankhuri Agrawal, 'Covid-19 And Dwindling Indian Federalism' (2020) 55(26-27) *Economic and Political Weekly* <www.epw.in/journal/2020/26-27/commentary/covid-19-and-dwindling-indian-federalism.html> accessed 17 December 2021.

30 World Health Organization, 'Novel Coronavirus (2019-nCoV): Situation Report 1' (21 January 2020) <www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> accessed 30 September 2021.

31 Teena Thacker, 'Centre Issues State-Wise Division of Covid 19 Red, Orange & Green Zones' *The Economic Times* (8 May 2020) <www.economictimes.indiatimes.com/news/politics-and-nation/centre-issues-state-wise-division-of-covid-19-red-orange-green-zones/articleshow/75486277.cms?from=mdr> accessed 30 September 2021.

respective states. Further, the Disaster Management Act of 2005³² was evoked under which guidelines were being prescribed by the centre to the states. Under section 11 of the said Act, the centre must create a 'National Plan'³³ to manage a disaster, in this case, the pandemic. Section 11(2) of the Act also calls for states' consultation³⁴ for the implementation of the plan. It is under this plan that the centre issues binding guidelines, as mandated by section 6(2) of the Act,³⁵ to states for its implementation. However, no such plan was created, therefore no question of states' consultation arose. The execution was criticised as the centre circumvented the states' role³⁶ in containing the pandemic. Another pressing problem that the states faced during the lockdown was the institutional management of the migrant workers' crisis³⁷ during the first wave of the COVID-19 pandemic.³⁸ Horizontal federalism took a toll when the states poorly managed the movement of interstate migrant workers³⁹ from host states like Maharashtra, Delhi NCR, Karnataka etc. to source states like Uttar Pradesh and Bihar. The passage of the Farmers' Produce, Trade and Commerce (Promotion and Facilitation) Bill on 17th September, 2020⁴⁰ is yet another example of the country's poor federal structure. Agriculture is a state subject⁴¹ in India. Therefore, the Centre's drawing of constitutional power in order to pass national law on a state subject was perceived as the rupture of the states' sphere of power and authority.⁴² Another issue that is representative of the federal tension and has been brewing for some time now is the fissured relationship of the states and the centre in the Goods and Services Tax (GST) regime. The tax which was aimed at improving the federal relationships in the country has somehow managed to worsen it.⁴³ States like Kerala, West Bengal, Punjab,

32 The Disaster Management Act 2005.

33 The Disaster Management Act 2005, s 11.

34 The Disaster Management Act 2005, s 11(2).

35 The Disaster Management Act 2005, s 6(2).

36 Pranav Verma and Sugghosh Joshi, 'Reaffirm Cooperative Federalism' *The Hindu* (13 May 2020) <www.thehindu.com/opinion/op-ed/reaffirm-cooperative-federalism/article31567966.ece> accessed 30 September 2021.

37 Pankhuri Agrawal, 'Covid-19 And Dwindling Indian Federalism' (2020) 55(26-27) *Economic and Political Weekly* <www.epw.in/journal/2020/26-27/commentary/covid-19-and-dwindling-indian-federalism.html> accessed 17 December 2021.

38 World Health Organization, 'Novel Coronavirus (2019-nCoV): Situation Report 1' (21 January 2020) <www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports> accessed 30 September 2021.

39 Shoaib Daniyal, 'Now, Border Conflicts Within India - as States Create Barricades to Keep Out the Coronavirus' (*Scroll.in*, 3 April 2020) <www.scroll.in/article/958041/now-border-conflicts-within-india-as-states-create-barricades-to-keep-out-the-coronavirus> accessed 30 September 2021.

40 Farmers' Produce Trade and Commerce (Promotion and Facilitation) Lok Sabha Bill, no 113-C of 2020.

41 The Constitution of India 1950, sch VII, list II, s 14.

42 Yamini Aiyer and Mekhala Krishnamurthy, 'Where Reforms And Federalism Clash' *Hindustan Times* (6 October 2020) <www.hindustantimes.com/analysis/where-reforms-and-federalism-clash-opinion/story-uRvliZDJOZ2c64egQwyK5H.html> accessed 30 September 2021.

43 Medha Biswas, 'Is GST And its Propulsion of the Centre-State Relationship Into a Fiscal War Undermining the Principles of Cooperative Federalism?' (*The Leaflet*, 18 October 2021) <www.theleaflet.in/is-gst-and-its-propulsion-of-the-centre-state-relationship-into-a-fiscal-war-undermining-the-principles-of-cooperative-federalism/> accessed 17 December 2021.

Tamil Nadu *et al.* have complained against this system of revenue collection and fund allocation by terming it unfair.⁴⁴ The COVID-19 pandemic only managed to deteriorate the situation. Continuous appeals from the state governments at the onset of the pandemic to the union government to proffer fiscal support were ignored.⁴⁵ Moreover, delays in the GST council meetings, foregoing the principles of consultations⁴⁶ have only led to the slow demise of effective federalism.

This dilapidation of India's federal nature has only been exacerbated by the ongoing freeze on the reallocation of Parliamentary and Assembly seats⁴⁷. Addressing the issue after five decades from when it should have been, is going to open a Pandora's box of unwelcome predicaments that have only intensified over the decades. In order to closely scrutinise the problems that the absence of any reasonable delimitation exercise has to offer, this section is further compartmentalised to analyse each one of them.

UNDER AND OVER REPRESENTATION

The current Lok Sabha and State Assembly strengths were determined by the 1971 Census, which shows that there will be a lag of 60 years before the next delimitation procedure, assuming the Parliament does not pull off another dangerous stunner, like it did in the past (1976 and 2002). By freezing the reallocation of Lok Sabha seats to the states for 60 years now, the country has long evaded the rearrangements to be made to the political scenario to account for changes. The freeze has resulted in the over-representation of under populous states and under-representation of over populous states. Thus, different constituencies have hugely different strengths. For instance, the average population to seat ratio in Tamil Nadu is close to 2 million,⁴⁸ whereas the ratio in Uttar Pradesh hovers around 3 million.⁴⁹ In Kerala, one representative represents 1.8 million people (on average),⁵⁰ but Bihar on the other hand has an average ratio of more than 3 million.⁵¹

Currently, several North Indian States are under-represented, while several South Indian states are over-represented. If the reallocation of Lok Sabha seats were to

44 *ibid.*

45 Yamini Aiyar, 'GST: End of Road For Cooperative Federalism?' (*Bloomberg Quint*, 2 June 2021) <www.bloombergquint.com/gst/gst-end-of-the-road-for-cooperative-federalism> accessed 17 December 2021.

46 *ibid.*

47 TK Vishwanathan, 'The Dilemmas of Delimitation' (*The Hindu*, 03 August 2017) <<https://www.thehindu.com/opinion/op-ed/the-dilemmas-of-delimitation/article19397838.ece>> accessed 03 February 2022.

48 Technical Group on Population Projections, 'Report on Population Projections for India and States 2011-2036' (November 2019) <www.nhm.gov.in/New_Updates_2018/Report_Population_Projection_2019.pdf> accessed 28 January 2022.

49 *ibid.*

50 *ibid.*

51 *ibid.*

happen in 2031, Tamil Nadu will lose as many as 10 seats, while Uttar Pradesh will gain as many as 13 seats. The current situation blemishes the democratic setup of the country by valuing one person's vote more than the other. For example, presently a person from Kerala or Tamil Nadu has a more valuable vote than a person from Uttar Pradesh or Bihar. Moreover, this disproportion is such that in one state, even the Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) do not represent the same size of the population in their respective constituencies (due to differential growth rates in different parts of the state).⁵² The present scenario violates Article 81(2)(a) and (b)⁵³ which provides for proportionate representation of each state in the Lok Sabha and of each division in the State Assembly, respectively. This can also be said to be violative of the 'one man, one vote, one value' principle. The principle was thoroughly examined in the case of *R.C. Poudyal v Union of India*⁵⁴ which looked at the constitutional scheme of incorporation of the state of Sikkim into the Indian state. This judgement held:

*Though the rule 'one person one vote' is a broad principle of democracy, it is more a declaration of a political ideal than a mandate for enforcement with arithmetical accuracy. These are the usual problems that arise in the delimitation of constituencies. In what is called the 'first-past-the post' system of elections, the variations in the size and the voting populations of different constituencies, detract from a strict achievement of this ideal.*⁵⁵

The Hon'ble bench rightfully held that there are problems that arise with the process of delimitation and in the achievement of the one man, one vote principle. It essentially asserts that the principle is not a constitutional mandate. This argument holds even today that solely relying on delimitation will raise concerns as mentioned in the judgement and also further elaborated in this article. It is far from being a sacrosanct principle and at best it can be termed as an ideal. However, not increasing the seats or holding off on delimitation for any longer would only deteriorate the seat to population ratio of certain states which are even currently under-represented. There would be understandable discontent in states like Uttar Pradesh, Bihar and Rajasthan (refer to Table 1) where a higher population is electing a lesser number of representatives. As a consequence, this would give rise to the issue of certain states having more clout in the Parliament.

For all practical purposes, if one were to compare the actual voter turnout in Tamil Nadu and Uttar Pradesh, it would be revealed that the ratio of voter population to Lok Sabha seats allotted is actually higher for TN than for UP.⁵⁶ This can be credited to

⁵² Verma (n 80).

⁵³ The Constitution of India 1950, arts 81(2)(a) and 81(2)(b).

⁵⁴ 1993 AIR 1804.

⁵⁵ *ibid*.

⁵⁶ Vaishnav and Hinton (n 74).

higher voter turnout in the South Indian states than that in the North Indian states. However, to calculate the population to seat ratio on the basis of voter turnout might be a fallible process as historically, national elections in India have had a voter turnout of around 60 per cent.⁵⁷ This percentage varies across states and elections. The total number of voters (coming out to vote) registered during elections is therefore not representative of the actual population of the constituency leading to the obvious discrepancy.

BALLOONING SIZE OF THE CONSTITUENCIES

At present,⁵⁸ the average representation ratio of India's constituency peaks at 2.5 million, which is more than three times that of the United States (the US has the second-highest average representation ratio in the world). The sheer number of people that the representatives in India need to represent is humongous and incomparable to that of any other country of a similar political structure.

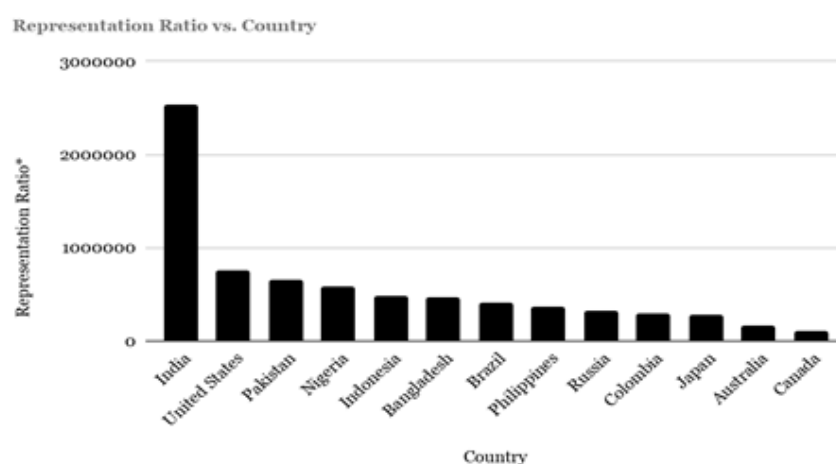


Figure 1: Representation Ratios of India And Other Countries.⁵⁹

⁵⁷ Pradeep Chhibber, Francesca Jensenius and Harsh Shah, 'Why Voters Don't Turn Up in Large Numbers in Lok Sabha Elections – All Politics is Local' (*Scroll*, 12 March 2019) <<https://theprint.in/opinion/why-voters-dont-turn-up-in-large-numbers-in-lok-sabha-elections-all-politics-is-local/204344/>> accessed 17 December 2021.

⁵⁸ Reva Abrol and Prakhar Misra, 'Fast Fact: India's Representation Ratio is off the Charts' (*ICDF Institute: The Blog*, 11 April 2019) <www.idfcinstitute.org/blog/2019/april/fast-fact-indias-representation-ratio-is-off-the-charts/> accessed 30 September 2021.

⁵⁹ *ibid.*

Bangladesh with a considerably higher population density (1252.60 inhabitants per square kilometre) than India (459.60 inhabitants per square kilometre)⁶⁰ has a representation ratio of 470,541 as compared to India's 2,541,444. The population density of the Philippines at 362.60⁶¹ is closer to India, and yet its representation ratio is almost seven times lower than that of India. Similarly, other countries with comparable size or population density like Brazil, Australia or Canada have strikingly lower representation ratios.

The year 2026 was made the cut off year for the freeze since the National Population Policy (2001) said that the country would reach the replacement population growth rate by 2026 when the birth rate and the death rate would be identical, hence the population is likely to stabilize by that time.⁶² While this reason stands partly justified, it is too inestimable to evaluate whether the projection would come true. Therefore, the reason is no good to extend the freeze beyond 2026. Moreover, while this rationale can be used to support the freeze on the Lok Sabha seats, it fails to hold water in justifying the freeze on the State Assembly seats. If the process of delimitation is not carried out after 2026, the ballooning size of the constituencies will lead to highly inefficient administration and governance and will pose a threat to democracy.

VIOLATION OF ARTICLES 330 AND 332 OF THE CONSTITUTION

A lesser discussed consequence of the reapportionment is the change in the number of seats that are constitutionally reserved for the Scheduled Castes (SCs) and the Scheduled Tribes (STs). Article 330 and 332 of the Constitution provides for the reservation of seats in the Lok Sabha and the State Assemblies for the SCs and the STs.⁶³ The number of seats to be reserved for them is determined using two sets of data - i) population share of SCs and STs in a state, and ii) the total number of seats allotted for each state. Current calculations have been made using the data from two different Censuses. While the population share of SCs and STs in states was last updated in 2008, the total number of seats for each state has remained constant since 1971.

However, on calculating the number of seats by using the 2011 Census, the change will be limited to an increase of 1 ST reserved and 2 SC reserved seats.⁶⁴ Though the change is minimal, this cannot be used as a defence to justify the usage of dual Census reports as the Constitution prescribes the usage of the previous Census report for both sets of data.⁶⁵

60 M Szmigiera, 'Countries with the Highest Population Density Worldwide in 2019' (*Statista*, 30 July 2021) <www.statista.com/statistics/264683/top-fifty-countries-with-the-highest-population-density/#:~:text=Monaco%20led%20the%20ranking%20for,1%2C815.9%20people%20per%20square%20kilometer> accessed 30 September 2021.

61 *ibid*.

62 Verma (n 80).

63 The Constitution of India 1950, arts 330 and 332.

64 Vaishnav and Hinton (n 74).

65 The Constitution of India (n 135).

THE TUSSLE BETWEEN NORTH AND SOUTH INDIAN STATES

If the Lok Sabha seats were reallocated on the basis of the 2011 and 2031 Census, their composition would look like this:

Table 1: State Wise Lok Sabha Seats Projections Without Increment in Total Lok Sabha Seats - 2020 & 2031.

State	Actual Lok Sabha Seats 2020 ⁶⁶	Projected Lok Sabha Seats 2020 ⁶⁷	Projected Lok Sabha Seats 2031 ⁶⁸
India	543	543	543
Andhra Pradesh + Telangana	42	38 (-4)	34 (-8)
Assam	14	14	14
Bihar	40	47 (+7)	52 (+12)
Chhattisgarh	11	11	12 (+1)
Delhi	7	8 (+1)	9 (+2)
Gujarat	26	27 (+1)	29 (+3)
Haryana	10	11 (+1)	12 (+2)
Himachal Pradesh	4	3 (-1)	3 (-1)
Jammu & Kashmir (before 2019)	6	6	5 (-1)
Jharkhand	14	15 (+1)	16 (+2)
Karnataka	28	27 (-1)	26 (-2)
Kerala	20	15 (-5)	14 (-6)
Madhya Pradesh	29	33 (+4)	35 (+6)
Maharashtra	48	50 (+2)	49 (+1)
Odisha	21	19 (-2)	17 (-4)
Other States & UTs	19	9 (-10)	9 (-10)
Punjab	13	12 (-1)	12 (-1)
Rajasthan	25	30 (+5)	32 (+7)
Tamil Nadu	39	32 (-7)	29 (-10)

66 'Members: State Wise List' (Lok Sabha) <<http://164.100.47.194/Loksabha/Members/StatewiseList.aspx>> accessed 30 September 2021.

67 Technical Group on Population Projection (n 120).

68 *ibid.*

Uttarakhand	5	5	5
Uttar Pradesh	80	90 (+10)	93 (+13)
West Bengal	42	41 (-1)	38 (-4)

A close look at the table furnished above would show that if delimitation were to happen in 2031 without increasing the total strength of the Lok Sabha, the BIMARU states⁶⁹ (originally Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh; now Bihar, Jharkhand, MP, Chhattisgarh, Rajasthan, UP and Uttarakhand) or the Hindi belt states will gain as many as 41 seats. If Punjab, Haryana, Delhi and Himachal Pradesh are added to it, then North India will collectively gain 43 seats. While the North will gain, the South Indian states will lose 26 seats. Other states that will significantly lose representation are West Bengal and Odisha (4 seats each). North-East Indian states and Union Territories are given a minimum number of representatives because of their location and importance irrespective of their population and geographical territory.

The Lok Sabha would then have 281 seats allotted to the North Indian states, encouraging polarization between North Indian states and other states. Therefore, by consolidating votes in North India, a political party can easily emerge victorious as the majority mark of the Lok Sabha is 272. In such a case, even if a political party is not the popular choice in the rest of India, it has chances of winning the general election by just focusing on the Northern states. While re-allotting seats as per the latest Census is imperative to uphold the 'one man, one vote, one value' principle, it will certainly be undemocratic if the total number of seats is not increased to reflect the population growth in the country since 1971. Moreover, it will lead to a heavy imposition of the opinions of the BIMARU states at the expense of the voice of the rest of Indian states.

Post the family planning programmes launched by Indira Gandhi during the emergency, and the National Population Plan of 2000, it was expected that all the states shall achieve equity in terms of population growth rate, but that did not happen.⁷⁰ In the words of the National Population Plan, the freeze for delimitation was extended till 2026, '*in order to enable state governments to fearlessly and effectively pursue the agenda for population stabilisation.*'⁷¹ The Southern states along with West Bengal, Odisha and Assam have managed to control their population incredibly well. However, their population control will lead to their loss of representation thereby punishing them for controlling their population. The high disparity in the population

69 Sanjeeb Mukherjee, 'Ashish Bose: The Man Who Coined BIMARU Tried to Make Things Simpler' *Business Standard* (New Delhi, 8 April 2014) <www.business-standard.com/article/current-affairs/ashish-bose-the-man-who-coined-bimaru-tried-to-make-things-simple-114040701234_1.html> accessed 30 September 2021.

70 Sivaramakrishnan (n 75).

71 *ibid.*

of the major states makes the freeze of questionable character. It may also be translated as an approach to gaining political control by the political parties. The South is already unhappy with the large proportion of taxes that it needs to pay to fulfil the Finance Commission's aim to close the gap between the wealthier states and the poorer states (that is by collecting more taxes from the richer states⁷² - mostly the South Indian states and Maharashtra). Snatching its political representation in the Lok Sabha will only introduce the political equivalent of the pre-existing 'horizontal fiscal imbalance'.

REINSTATING COOPERATIVE FEDERALISM

Federalism is a system where political powers are partitioned between the Union and the States. A nuanced glance will demonstrate that the backbone of this system rests on the principle of European Law known as 'subsidiarity'. It states that a confederation of states can act well only if that action is taken at a rarefied level. In simpler terms, decisions should be taken as near the grassroots as possible.⁷³ When there prevails a condition of inter-state, intra-state, and centre-state cooperation, cooperative federalism is established. It roughly refers to a system where the states and the centre work and interact collectively and cooperatively to ensure smooth administration of the country. This system is aimed at decentralising the centre and providing as much representation to one state as the other.

However, a highly centralised federation with huge inter-state political and fiscal disparity is certainly no good replica of cooperative federalism. The situation in India is that of a 'centrist Constitution with federal trimmings'⁷⁴ as summed up by former governor of the Reserve Bank of India, L.K. Jha. Therefore, delimitation of constituencies is provided by the Constitution as an instrument to keep the disproportionate representation of states and centralisation of federalism in check. The freeze has given rise to several key issues, as discussed above, and the lack of a holistic outlook in addressing them will result in an abominable state of affairs. Here, the author attempts to orchestrate a panacea to address the existing problems without neglecting any element.

INCREASING THE LOK SABHA STRENGTH

By increasing the number of Lok Sabha seats, the dual problem of ballooning representation ratios and loss of seats by the South and East Indian states shall be addressed. Under the current scenario, any reallocation of Lok Sabha seats will lead to the North gaining representation at the expense of the South. The number of Lok

⁷² Daniyal (n111).

⁷³ *Eur Lex Encyclopaedia* <<https://eur-lex.europa.eu/summary/glossary/subsidiarity.html>> accessed 30 September 2021.

⁷⁴ Mark Tully, 'India's Far From Cooperative Federalism' *Hindustan Times* (27 September 2020) <www.hindustantimes.com/columns/india-s-far-from-cooperative-federalism/story-teUUoRnjTzsABfyix0y7JL.html> accessed 30 September 2021.

Sabha seats can be increased to an optimum level so that no state loses any seats. This will also ensure that the BIMARU states do not dominate the centre by crossing the majority mark.

*Table 2: State Wise Lok Sabha Seats Projections With Increment In Total Lok Sabha Seats - 2020.*⁷⁵

BIMARU States	Lok Sabha Seats (Out of 1380)	Other States	Lok Sabha Seats (Out of 1380)
Bihar	108	Andhra Pradesh + Telangana	91
Chhattisgarh	27	Gujarat	66
Jharkhand	35	Karnataka	64
Madhya Pradesh	82	Kerala	36
Rajasthan	77	Maharashtra	126
Uttarakhand	11	Odisha	44
Uttar Pradesh	231	Tamil Nadu	71
		West Bengal	97
Total	571	Total	595

In a hypothetical situation (refer Table 2), if the average representation ratio is decided to be 1 million, then there must be 1,380 seats⁷⁶ based on the population data in 2020. Consequently, the majority mark would be 691. BIMARU states will receive not more than 600 seats collectively while the South Indian states along with West Bengal, Maharashtra, Odisha, and Gujarat will receive more than 550 seats. The remainder will be divided among the other smaller states. Such a structure shall assure that no ethnic continuum receives more seats than the majority mark, and therefore, maintains cooperative federalism. A similar allotment of Lok Sabha seats must be done in 2031.

RESTRUCTURING THE RAJYA SABHA

The Rajya Sabha or the Council of States is the less powerful counterpart of the Lok

⁷⁵ Technical Group on Population Projection (n 120).

⁷⁶ 'India Population' (*Worldometer*, 2020) <www.worldometers.info/world-population/india-population/#:~:text=India%202020%20population%20is%20estimated,1%2C202%20people%20per%20mi2> accessed 30 September 2021.

Sabha and represents the states at the centre. However, this 'Chamber of States' often vacillates to a 'playground for party high commands'.⁷⁷ Originally, the Rajya Sabha was meant to be represented by indirectly elected representatives who were native to the state that they represented. However, this rule evaporated gradually to accommodate the political whims and fancies of the politicians. In the P.V. Narasimha Rao government, the then Finance Minister Dr Manmohan Singh represented Assam in the Rajya Sabha despite being a native of Delhi/Punjab.⁷⁸ Around the same time, another MP Venkaiah Naidu represented Karnataka despite belonging to Andhra Pradesh.⁷⁹ The domicile requirement of the MPs in Rajya Sabha was officially done away with in 2003 through an amendment to the Representatives of People Act.⁸⁰ This was done to make way for accommodating 'political carpetbaggers'⁸¹ in the Parliament and increase the political party representation. The amendment was deemed unconstitutional by several legal practitioners and scholars. Subsequently, it was challenged in the case of *Kuldip Nayar v Union of India*.⁸² It was argued by the petitioner that the removal of the domicile requirement violated the basic structure of the Constitution and threatened the federal system of the country. The Court held that domicile requirement of the representative is not an essential feature of federalism.⁸³ While justifying the wisdom of the Parliament in doing away with the domicile requirement, the Court cited the Constituent Assembly debate of 28 July 1947 that indicated the purpose of having an Upper House. The object described was to 'hold dignified debates on important issues and to share the experience of seasoned persons who were expected to participate in the debate with an amount of learning'.⁸⁴ The Court, therefore held that territory was not an essential element of federalism. The judgement is problematic because the mere fact that a state can be represented by a person belonging to another state renders the 'Council of States' no more than the 'Council of Electoral Rejects'.⁸⁵ Many of them even spring from one state to another as and when there are such vacancies.⁸⁶

Other than full-time politicians who make their way into the Parliament by exploiting this provision, rich businessmen, industrialists, and public personalities with political connections also misuse it by getting a Rajya Sabha seat for themselves. For instance,

77 Daniyal (n111).

78 *ibid.*

79 *ibid.*

80 The Representatives of People's (Second Amendment) Act 2003.

81 Tully (n 146).

82 (2006) 7 SCC 1.

83 (2006) 7 SCC 1 [68].

84 Constituent Assembly Deb 28 July 1947, vol 4, para 32 122 <www.constitutionofindia.net/constitution_assembly_debates/volume/4/1947-07-28> accessed 11 April 2021.

85 Daniyal (n 111).

86 *ibid.*

Parimal Nathwani,⁸⁷ who is a businessman hailing from Gujarat,⁸⁸ represents Andhra Pradesh in the Rajya Sabha.⁸⁹ His attendance is 40% making it below both the national and state average. He has participated in only 20 parliamentary debates as opposed to the national average of 151.7 and the state average of 81.4. Another example would be K.D. Singh, an industrialist from Chandigarh who represents the state of West Bengal.⁹⁰ He participated in only 14 debates, far below the national average and state average of 125.5 and 162.1 respectively.⁹¹ He was arrested for serious money laundering charges in January 2021.⁹² Abhishek Manu Singhvi, an eminent lawyer, qualified scholar and a member of the Indian National Congress, originally hails from Rajasthan⁹³ but represents West Bengal⁹⁴ instead in the Rajya Sabha. His attendance record is just 43% - far below the national and state averages.⁹⁵ He has participated in only 17% of the total debates.⁹⁶ To sum up, the non-requirement of domicile has only been exploited by political parties, politicians and the 'high and rich' people of the society.

To solve this, the domicile requirement for the MPs in Rajya Sabha must be brought back. It is an essential function of federalism in India. With the domicile requirement back in place, states will regain their representation at the centre by curbing pseudo representation to an extent. To solve the problem of majoritarianism in the Rajya Sabha, its capacity must be increased in proportion to the increase in the Lok Sabha's capacity as suggested in the preceding section. By doing so, the Rajya Sabha seats allotted to the states will reflect their population. However, the author's opinion is to adopt the Senate system of United States, where each state is given equal representation of 2 seats each.⁹⁷ The American system of Senate was supported by Federalists to ensure that equality of states is maintained.⁹⁸ Without this compromise,

87 'Parimal Nathwani' (PRS Legislative Research) <www.prsindia.org/mptrack/rajya-sabha/parimal-nathwani> accessed 30 September 2021.

88 Daniyal (n 111).

89 Nathwani (n 159).

90 Shutapa Paul, 'Mamata's Billionaire' (*India Today*, 18 March 2011) <www.indiatoday.in/nation/story/kd-singh-is-a-mamata-banerjee-fan-130175-2011-03-18> accessed 30 September 2021.

91 'Kanwar Deep Singh' (PRS Legislative Research) <www.prsindia.org/mptrack/rajya-sabha/kanwardeepsingh> accessed 30 September 2021.

92 PTL, 'ED Arrests Former TMC MP KD Singh in Money Laundering Case' *The Indian Express* (14 January 2021) <www.indianexpress.com/article/cities/delhi/ed-arrests-former-tmc-mp-kd-singh-money-laundering-7144750/> accessed 30 September 2021.

93 'Who is Abhishek Manu Singhvi?' (NDTV, 25 April 2012) <www.ndtv.com/people/who-is-abhishek-manu-singhvi-478489> accessed 11 April 2021.

94 'Abhishek Manu Singhvi' (PRS Legislative Research) <www.prsindia.org/mptrack/rajya-sabha/abhishek-manu-singhvi> accessed 30 September 2021.

95 *ibid.*

96 *ibid.*

97 United States Senate <www.senate.gov/> accessed 30 September 2021.

98 'The Debate Over the Senate' (*Centre for the Study of the American Constitution*) <www.csac.history.wisc.edu/document-collections/constitutional-debates/senate/> accessed 30 September 2021.

the smaller states would have to suffer as they would not have the numerical strength of the larger states. This method would lead to the creation of a house where each state irrespective of their population or size has equal representation. In a representative democracy, the fear of the majority group (based on religion, ethnicity, religion, language, class, and other distinctions) holding sway over power is legitimate. In a diverse country like India where states were primarily created as different linguistic blocs, the political strength of certain linguistic groups is undeniably high owing to their higher population. In this case, each state or language group will be treated equally. The author acknowledges that this system would violate the principle of 'one man one vote', however, as the Rajya Sabha members are elected indirectly, the violation would practically not affect the principle of proportionality. It is to be noted that the United States, being a 'compound republic', upheld both democracy and federalism by adopting this system.⁹⁹ While the House of Representatives represents the will of the people, the Senate represents the will of the States. By allowing for this adjustment, the portion of sovereignty of one state is equal to the other,¹⁰⁰ thereby keeping a check on the excesses of law making power of certain states.

By adopting the system, no state shall be able to impose an overbearing influence at the centre and the more populous states will be restricted from thrusting their agendas at the cost of the less populous states. This way, there will be cooperation in the federal structure of the country where each state will be represented equally and not in a skewed manner that favours one over the other.

INCREASING STATE POWERS

There is a famous cartoon by Kutty¹⁰¹ (published in the Indian Express dated April 10, 1967) that depicts the Head of States with a begging bowl in their hand, standing in a queue in front of the Planning Commission. This cartoon, now over half a century old, still holds true.

In India, apart from the horizontal separation of powers, there exists a vertical separation of powers too. The quasi-federal structure in India has segregated union powers from state powers. However, there is a clear acknowledgement of the primacy of parliamentary law over state legislation in the Constitution. This prompts the states to increase their representation in the centre to reduce the centre-state friction, but this in turn gives rise to inter-state friction. An argument could be furthered in support of the federal structure that if state powers are increased *sans* any

99 Alexander Hamilton, James Madison and John Jay (collective pseudonym Publius), 'The Federalist No 62' 178 The Independent Journal <www.csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/Publius_62.pdf> accessed 30 September 2021.

100 *ibid*.

101 Anushree, 'Governing the Governors' (*Frontline*)<www.frontline.thehindu.com/cover-story/article24440645.ece> accessed 30 September 2021.

interference by the centre, there will be less need to have an equal representation of each state at the centre since union powers will be limited to defence, foreign relations, national projects like highways *et al.* In a diverse country like India, should precedence be given to cultural uniformity by strengthening the centre? Or should precedence be given to the regional heterogeneity by strengthening the federal units? These are questions that are beyond the purview of the present discussion but command attention.

CONCLUSION

Before concluding, one may also want to take a relook at the Constitution that was a product of its time. The way India's population is surging, it will not be feasible to keep up with it even after a decennial delimitation exercise as there needs to be an upper cap on the number of representatives one may have. This leads us to more fundamental questions of whether precedence should be granted to protecting the interests of the states or to the principle of 'one man one vote', both of which are essential for maintaining the bright federal and democratic nature of the country. Balancing both principles to avoid any sort of trade-off is favourable but the clock is ticking and it has to be implemented soon. Or how else would India be able to survive the existing situation?