

The States in Parliament

Delimitation and Reconciling Political
Equality with Indian Federalism



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Contents

I. Introduction: A Nation's Procrastination	1
II. What is Political Equality?	4
1. Delimitation and Apportionment	4
2. Political Equality as "One Person, One Vote"	6
3. The Limits of Voting Equality	7
4. Groups in Democratic Politics	8
5. A Balanced Approach?	9
6. Population Control, Revenue Sharing, and Federalism.....	11
III. The Unique Contexts of Parliament and Indian Federalism	14
1. The constitutional vision for the Lok Sabha and the Rajya Sabha.....	14
2. The development of constitutional delimitation requirements.....	17
3. Contours of and trends in Indian federalism.....	19
4. The fragility of Indian federalism.....	22
IV. What Kind of Democracy Do We Want to Be?	25
1. Interpretative choices.....	25
2. Fair Apportionment and Constitutional Reform	27
a. Further postponement.....	27
b. A larger Lok Sabha.....	28
c. Apportionment on the basis of number of voters.....	29
d. Full proportionality in the Lok Sabha.....	30
e. Degressive proportionality in the Lok Sabha.....	30
f. Degressive proportionality or equalisation in the Rajya Sabha	31
g. Balanced fiscal powers	32
V. Conclusion: A Nation's New Incarnation?	34

I. Introduction: A Nation's Procrastination

Some crises emerge suddenly and without warning, while others sit in plain sight and grow with time as we go about other matters. The reason the latter can be particularly concerning is that, as time passes and the crisis is ignored, it becomes easier to forget its significance even as it grows beyond manageable limits and we start to lose sight of what the entire matter was even about.

This is the kind of collective amnesia we are struggling with in addressing the question of allocation of seats to states in the Indian Parliament. Lok Sabha seats have not been redistributed between Indian states to match changes in their population levels ever since the Forty-second Amendment to the Constitution froze the allocations made as per the 1971 census until 2000, and the Eighty-fourth Amendment extended this freeze until 2026. These extensions, advanced using the “smokescreen”¹ of population control, operated instead to preserve the political interests of states that had slower population growth. The lengthy periods of the extensions may well have also served to ensure that the politicians implementing them would not have to deal with the consequences of their decision. It is now our turn to face a problem that two generations of Indians before us chose to put off.

In studying delimitation in India, this report restricts itself to the question of how parliamentary seats should be distributed or “apportioned” between states and, as a result, does not enter into other related questions such as how the boundaries of electoral constituencies within states should be drawn. The readjustment of constituency boundaries brings up a range of additional issues such as how demographic changes within a state should be managed (e.g., in the context of urbanisation) or what principles should be employed in defining the shape of constituencies (e.g., administrative ease, contiguity, community representation etc.). These are tremendously significant issues in themselves, and we do refer to related examples and common principles. However, this report only delves into the question of seat allocation here not just because of a lack of space but because the historical and political contexts surrounding the dilemma have imbued it with special significance and an aura of intractability. Seat allocation also comes up prior to boundary definition in terms of procedure (the Constitution first requires a certain number of seats to be allocated to each state and then requires constituencies within the state to be defined keeping this number in mind). The problem thus deserves dedicated study.

What then is at stake in the question of seat allocation? A basic explanation is in order here. The Constitution, in a bid to ensure equality between the values of the votes of different voters in India, requires seats in the Lok Sabha to be allocated to states in proportion to their population. Deviating from this principle results in the votes of persons in less populous states being more valuable than the votes of persons in more populous ones. This is because an individual vote makes less of a difference in an election when there are more voters voting in it. For example, your vote has more influence in a committee of ten members than in an election with ten lakh voters. This idea drives the push for population-proportionate seat allocation in the Lok Sabha.

On the other hand, if seats are allocated strictly in proportion to the population levels of states today, the political implications would be massive, with a decisive shift in the power of different regions at the national level. For example, if 2026 population projections are used (and the size of the Lok Sabha is not changed), Kerala, Tamil Nadu, and undivided Andhra Pradesh would lose 8 seats each in the Lok Sabha, while Uttar Pradesh and Bihar would gain 11 and 10 seats respectively; West Bengal and Odisha would lose 4 and 3 seats respectively, while Rajasthan and Madhya Pradesh would gain 6 and 4 seats respectively.² This follows from the long delays in implementing the process and the increasingly wide population differences between states. In one sense, these projected changes would overlap with existing fault lines: north India already has a greater

¹ Alistair McMillan, ‘Constitution 91st Amendment Bill: A Constitutional Fraud?’ (2001) 36 (14-15) *Economic & Political Weekly* 1171 (‘McMillan’).

² Milan Vaishnav & Jamie Hinton, ‘India’s Emerging Crisis of Representation’ (*Carnegie Endowment for International Peace*, 14 March 2019) <<https://carnegieendowment.org/research/2019/03/indias-emerging-crisis-of-representation?lang=en>> accessed 25 June 2024 (‘Vaishnav & Hinton’).

say in national politics than other regions with distinct political preferences like south India.³ But the so-called “north-south divide” is not as rigid or clean as some claim,⁴ and focussing on it obscures the broader significance of delimitation. If regional variations in such a vast country are worth protecting in politics, we should be concerned about how fairly each and every state is represented in Parliament regardless of current electoral dynamics.

Disagreements of this kind are about fundamental political values: there is a distinct sense in which our regard for political equality seems to conflict here with our concern for the fate of Indian federalism, which is already beleaguered by several other problems. Much public discourse on the subject of delimitation for Parliament nonetheless tends to gravitate towards talk on population control and how revenue is shared among states. In the next section of this report (“What is Political Equality?”), we attempt to reorient the approach to this problem by calling attention to the basic egalitarian principle that instigated the apportionment crisis and lies at its root. In this view, the resolution of fiscal issues is a necessary step, but ultimately an insufficient one. Reframing India’s conception of political equality is a broader project that is upstream of these other concerns, not least because of how political institutions can shape fiscal institutions. Though the malapportionment crisis may seem like something uniquely our own, India is hardly the only country to have encountered it. This section therefore draws from global scholarship to explain why those concerned with political equality should not uncritically equate it with numerical equality in voting power and population-proportionality. Instead, it is important to also consider how *groups* can be fairly represented in a democracy and how states are a significant example of such groups. Readers will be able to appreciate why a more holistic understanding of political equality can help us navigate what may otherwise seem like intractable problems.

Following this, in the third section (“The Unique Contexts of Parliament and Indian Federalism”), we locate the legal and historical context in which this crisis has emerged. By understanding the constitutional vision for the Indian Parliament and the persistent issues involved in working India’s federal structure, readers can better appreciate why the weight of the past is part of the burden that must be carried in any attempt at forward-looking reform. The solution has not been built into our constitutional structure. As BR Ambedkar foresaw in 1955: “This disparity in the population and power between the states is sure to plague the country. To provide a remedy against it is most essential.”⁵ To some readers, the relevance of federalism to the delimitation crisis may not be immediately apparent. Discussion of the subject in India has long revolved around the relationship between the Union and the states, and the dominance of the former over the latter. However, the legal and political status of different states *relative to each other* is also intimately linked with the Union-state saga. We clarify the nature of this linkage here. As a result, the section also recounts the troubled history of Union-state tensions under the Constitution so as to make clear the gravity of the problem that population-proportionate apportionment would add to.

In the fourth section (“What Kind of Democracy Do We Want to Be?”), the principles developed in the second section are applied to the context identified in the third to offer a menu of solutions to the crisis of representation in Parliament. These include choices the courts might face in having to interpret the Constitution in the event of a challenge to the validity of certain actions, but more importantly, they detail

³ Sobhana K. Nair, ‘Is there a clear north-south divide in Indian politics?’ *The Hindu* (2 June 2023) <www.thehindu.com/opinion/op-ed/is-there-a-clear-north-south-divide-in-indian-politics/article66920464.ece> accessed 1 August 2024; Sagarika Ghose, ‘A story of two Indias’ *Deccan Herald* (6 December 2023) <www.deccanherald.com/opinion/a-story-of-two-indias-2798452> accessed 1 August 2024.

⁴ Akhilesh Pillalamarri, ‘There Is No North-South Divide in India’ *The Diplomat* (21 March 2024) <<https://thediplomat.com/2024/03/there-is-no-north-south-divide-in-india/>> accessed 1 August 2024; Badri Narayan, ‘BJP’s rise in South and fall in North’ *Financial Express* (5 June 2024) <<https://www.financialexpress.com/opinion/bjps-rise-in-south-and-fall-in-north/3514569/>> accessed 1 August 2024; Greeshma Kuthar, ‘The slow, steady march of Hindutva in South India’ *Frontline* (6 July 2024) <<https://frontline.thehindu.com/columns/south-india-bjp-win-thrissur-vote-share-increase-tamil-nadu-andhra-pradesh-telangana-lok-sabha/article68340247.ece>> accessed 1 August 2024.

⁵ B.R. Ambedkar, *Thoughts on Linguistic States* (first published 1955, Bheema Patrika Publications 1970) 23 (‘Ambedkar’). It is worth noting that while Ambedkar’s warning was in the context of how states themselves should be formed, he was also directly bringing to the fore questions about the relative political heft of different states in Union institutions (as well as possibility of populous states obtaining a dominant position). As we shall see further below, the question of the number and size of states, and the sub-division of larger states, is an important additional aspect for our discussion as well.

reform alternatives related to the design of Parliament. In sum, while this report does not set out a sure-shot solution to the problem at hand, it sets out a clear and systematic approach that can be pursued by political actors and citizens in answering a basic question: what is the appropriate role of the states in Parliament?

A final section concludes the discussion.

II. What is Political Equality?

Misconceptions about political equality make regular and fair delimitation in India more difficult. This section attempts to address this significant shortcoming by gradually unpacking the meaning and role of the principle so that readers can critically assess conventional perspectives on the subject and compare them with more holistic ones. At the outset, readers should keep in mind that much of the existing literature relevant for the subject of this report (i.e., the allocation, distribution, or apportionment of seats) actually studies a different subject: constituency boundaries. The process of defining the shape and borders of constituencies (more properly called delimitation or redistricting) has received more attention and study than seat allocation has, and so we draw on this wealth of knowledge to help readers capture the common thread that runs through the two. For example, we explain the background concept of “constituency” immediately below because it shows how there are no self-evident answers to the question of how representation should be structured, and democratic institutions need to be consciously designed to achieve something more than just equality in voting power. In particular, the interests of groups and communities need to be kept in mind. Why this is so and how it reframes our understanding of political equality becomes clearer in the rest of the section.

1. Delimitation and Apportionment

We are accustomed to thinking about democracy in a number of familiar ways. For example, we are likely to think about voting: each voter casts one vote to select a person who will represent a specific area in a legislative body. However, democratic institutions can be designed in a variety of ways. There is no pre-existing “will of the people” before institutions give rise to it, and different sets of institutions can give rise to different collective wills.⁶ This does not make the idea of a collective will meaningless. Rather, it means that voting systems, campaign rules, electoral finance, election management authorities, the regulation of political parties, candidate selection, free speech, federalism, and other such matters must be consciously structured so as to produce a fitting and legitimate collective will.

It is in this context that we must understand the role of constituencies in a democracy. As a leading scholar on the subject puts it, “[t]he concept of constituency is part of the blueprint from which the structure [of democracy] is built” and if we “use a different blueprint ... the structure will look radically different and produce different outcomes.”⁷ We can understand a constituency to be the group of people who vote for, are eligible to vote for, or are directly represented by a particular political representative,⁸ and we need not choose between these alternative understandings at this stage. If representative democracy involves holding the government accountable to the people, constituencies are a fundamental part of this system because they determine which groups of people hold which representatives directly accountable.

But how are these groups defined? Aspects of constituencies that we consider obvious are actually matters of choice. For example, while in India we usually think of constituencies as geographical areas or territories, they can also be defined on the basis of votes cast (in proportional representation), profession (in functional representation),⁹ religious or caste groups (e.g., in separate electorates), educational criteria (e.g., in graduates’ and teachers’ constituencies in certain Indian state legislatures) or even through randomised grouping.¹⁰ A choice to define constituencies in one way can advantage certain kinds of interests at the cost of others. For example, territorial constituencies may reduce the chances of representation for dispersed minorities, even if

⁶ Richard H. Pildes & Elizabeth S. Anderson, ‘Slingshot Arrows at Democracy: Social Choice Theory, Value Pluralism, and Democratic Politics’ (1990) 90(8) *Columbia Law Review* 2121, 2197-98.

⁷ Andrew Rehfeld, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design* (Cambridge University Press 2005) 30 (‘Rehfeld’).

⁸ Rehfeld (n 7) 34-35.

⁹ Samuel H. Beer, ‘The Representation of Interests in British Government: Historical Background’ (1957) 51(3) *American Political Science Review* 613; Ma Ngok, ‘Twenty Years of Functional Elections in Hong Kong: Exclusive Corporatism or Alternative Democratic Form?’ (2009) 45(4) *Journal of Representative Democracy* 421; Corinna Wolff, *Functional Representation and Democracy in the EU: The European Commission and Social NGOs* (ECPR Press 2013).

¹⁰ Rehfeld (n 7), Chapter 9.

some representatives effectively represent groups beyond their formally-defined constituency,¹¹ as when a woman parliamentarian stands for the interests of women across the country and not just in her constituency.

Constituency design can be guided by a range of considerations such as an agreement between groups, the distinctive political interests of a historical or emerging group, the protection of or compensation to a disadvantaged group, citizen and community development, and increased deliberation between citizens. The decision can even be aimed at producing certain kinds of electoral outcomes or certain incentives for representatives to cater to either group interests or more national interests. The right answers depend on the history, social facts, and political needs of a nation.¹²

The design of constituencies in terms of territory, votes cast, social group, or otherwise helps us understand the flexibility of the concept, but this kind of choice only determines the unit of measurement or the dimension along which constituencies are to be formed. Strictly speaking, this is not the subject of this report. But understanding it clarifies an important distinction, sets the stage for understanding seat allocation, and helps free us from rigid views about how we should think about democratic representation. Having defined constituencies in general, a nation still has to determine the number and form of specific constituencies in subsequent steps. The number of representatives or seats assigned to a state in the national legislature of a federal country needs to be determined in a process of *allocation* or *apportionment*, and geographic boundaries need to be drawn for each such constituency in a process of *delimitation* or *redistricting*.¹³ In Article 82, the Indian Constitution uses the term “readjustment” for both processes. *From this point on, the term “delimitation” will be used to refer only to the drawing or redrawing of constituency boundaries, while the term “apportionment” will be used to refer to the subject of this report: the allocation of parliamentary seats to states.*

A common concern arises when designing the two processes: the quality of representation that different individual and group interests enjoy. Right at the outset, we are confronted with the question “Who represents whom?” This question is answered more directly in the case of constituency design because we understand that voters in a constituency vote for *their* representative. However, the apportionment of a certain number of constituencies to a particular state also creates a relationship between a representative and the entire state insofar as a constituency’s representative is expected to pursue (or in fact pursues) the interests of the state that the constituency falls within. This could often be because the interests of the entire state are directly important to voters in the representative’s specific constituency.¹⁴ For example, regional political parties may legitimately contest in parliamentary elections precisely because they want to ensure the promotion of such state interests.

As long as constituencies are apportioned territorially, it is unrealistic to believe that representatives in Parliament will only pursue either the national interest or the constituency’s interests and skip over the middle rung of state interests. Indeed, by the end of this report, it will become clearer why they *should* pursue these interests.¹⁵ With this explanation in mind, if readers are able to appreciate how apportionment of seats creates

¹¹ Nadia Urbinati & Mark E. Warren, ‘The Concept of Representation in Contemporary Democratic Theory’ (2008) 11 *Annual Review of Political Science* 387, 396-97.

¹² Rehfeld (n 7) 11-12, 39 and 52; Charles R. Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton University Press 1989) 158 (‘Beitz’); Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press 2002) 200-01 (‘Dworkin I’).

¹³ Steve Bickerstaff, *Election Systems and Gerrymandering Worldwide* (Springer 2020) 5-6 (‘Bickerstaff’). It may be noted that literature and legal documents on the subject do not always cleanly distinguish “delimitation” and “apportionment” in this way and the terms are sometimes used interchangeably. Further, apportionment of seats need not only be to states but also to any sub-national unit of government.

¹⁴ To the extent that a representative’s direct constituents are not concerned about state-wide interests but the representative seeks to pursue it nonetheless, this can be thought of as an instance of a “non-electoral constituency”. A non-electoral constituency is the group of people whose interests a representative pursues even if these people aren’t eligible to vote for that particular representative; see, Rehfeld (n 7) 35. Another scholar refers to this kind of relationship as “surrogate representation”. See, Jane Mansbridge, ‘Rethinking Representation’ (2003) 97(4) *American Political Science Review* 522-525 (‘Mansbridge’).

¹⁵ This relates to the distinction between the concept of representation and the idea of *legitimate* representation. Insofar as a representative’s direct constituents are concerned about state-wide interests and would benefit from their promotion, the ordinary method of democratic accountability through elections legitimises the representation of these interests.

a link between the number of representatives from a state and the interests of that state, then it should be clear why the principles and concepts related to delimitation discussed below are applicable to apportionment as well.

2. Political Equality as “One Person, One Vote”

Political equality is a central principle in constituency design. It is also a crucial consideration in understanding apportionment, the subject of this report. As mentioned previously, the Indian Constitution requires seats to be allocated to different states in proportion to their respective population sizes. Underlying this requirement is the “one person, one vote” principle: the idea that each person voting in an election should cast only one vote and the value of each vote should be the same.

The idea behind “one person, one vote” is that individuals should not be given more or less votes because of such factors as their relationship with government officials or ministers, support for a political party, membership in a religious community, amount of wealth, educational qualifications, or the like. Their interests are weighed equally regardless of these factors. Similarly, they should not get more or less votes based on where they live and how many other people live there. If constituencies are drawn or delimited in a way that they have different population sizes, the votes of voters in constituencies with higher population levels would make less of a difference than those of voters in less populous constituencies. For example, if constituency A has 100 voters in it and constituency B has 200, then it would at most take 51 votes to win the seat for A but could take as much as 101 votes to win the seat for B. The vote of an individual voter in B counts for less and makes less of a difference in selecting representatives. This is like giving voters in B fewer votes. This kind of reduction in the relative value, weight, or influence of individual votes is called *malapportionment*.

“One person, one vote” is an idea often equated with political equality, which is in turn considered a defining feature of democracy itself.¹⁶ The significance of political equality can be traced to the idea “that all human beings are of equal intrinsic worth” and that “the good or interests of each person must be given equal consideration”.¹⁷ Our faith in political equality is also based in the understanding that no person or group is so definitely better qualified to govern than others that they should have complete and final authority: absolute power corrupts those who wield it, governments unchecked by opposition are prone to error, and minorities excluded from political participation have historically been neglected.¹⁸ Drawing from this understanding, “one person, one vote” is treated as a minimum ideal that democracy should strive to achieve.¹⁹

Some also consider political equality to be efficient because citizens would unanimously favour it over other options if they were to decide how to structure their government.²⁰ When individuals have to decide something together and face fundamental disagreements, it seems sensible that they should strike a fair compromise in which no person has any more of a say than another and each has the same political power.²¹ The high regard in which many hold equal voting power and population-proportionate allocation of seats to

Representation would also be legitimate if the representative is authorised by at least *some* of those who are represented and not by some other category of persons who are not represented at all; see, Rehfeld (n 7). Even otherwise, it has been argued that the legitimacy of “surrogate representation” (representation outside of the electoral constituency) depends on whether the most conflictual interests are represented proportionally and relevant interests are represented in deliberations in a systemic sense. See, Mansbridge (n 14) 524-525.

¹⁶ Rehfeld (n 7) 192.

¹⁷ Robert A. Dahl, *On Political Equality* (Yale University Press 2006) 4 (‘Dahl’).

¹⁸ Dahl (n 17) 4-5. See also, David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton University Press 2009) (arguing that democracy is legitimate not because it produces correct decisions but because it is generally acceptable as having the tendency to produce such decisions) (‘Estlund’).

¹⁹ Dahl (n 17) 8-9.

²⁰ Hans Gersbach, ‘Why one person one vote?’ (2004) 23(3) *Social Choice and Welfare* 449.

²¹ Jeremy Waldron, ‘The Core of the Case Against Judicial Review’ (2006) 115 *The Yale Law Journal* 1346 (“Better than any other rule, [majority decision] is neutral as between the contested outcomes, treats participants equally, and gives each expressed opinion the greatest weight possible compatible with giving equal weight to all opinions.”) For a discussion on some problems with the fairness argument, see Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Routledge 1996) 47-53.

states has meant that controversy can arise from mathematical dilemmas caused by the indivisibility of even a single legislative seat.²²

3. *The Limits of Voting Equality*

Despite strong support for the principle of “one person, one vote”, there remains good reason not to follow it dogmatically. For instance, some may deserve a greater say in a decision because they are more affected by it or because they are more knowledgeable on the subject.²³ From another perspective, it is unclear whether voting equality is achieved by equalising the population, number of resident nationals, number of eligible voters, number of registered voters, or voter turnouts of constituencies.²⁴ More fundamentally, however, it is likely that “one person, one vote” only represents *voting* equality and not *political* equality. Political decisions are taken on the basis of a much wider set of factors than just voting. We may prefer voting equality to a monarchy in which the king governs with absolute power but why should we prefer voting equality to, for example, a system in which the most disadvantaged person in society gets one additional vote? When compared to this slight deviation, “one person, one vote” may not seem as obviously correct.²⁵

Perhaps, the ideal of voting equality should be maintained only as a default position that can be deviated from given adequate reasons.²⁶ To understand whether a particular reason for shifting from voting equality would be adequate or not, we first need to understand what makes this default position significant. If voting equality only serves as a public confirmation of the equal status of citizens²⁷ or a fair procedure allowing everyone an equal chance to influence decisions,²⁸ perhaps it would have been easier to run a lottery that randomly selects one voter’s choice as the decisive one.²⁹ This would publicly express equal respect for all persons and offer them an equal chance to make political decisions. But if we do not think such a lottery is an attractive method, this is probably because we also want each voter’s choice to make a difference to the collective decision.

Does “one person, one vote” allow voters to make such a difference? In one view, equal voting power is a “trivial standard” in large constituencies because the power we are equalising is “infinitesimally small”.³⁰ After all, it is highly unlikely that the outcome of an election will be decided by a single vote (large-scale elections are won by margins larger than one vote).³¹ The importance of equal distribution of some particular power may well be “directly proportional to the value of that power itself.”³² To understand this statement, let’s consider an example. Let’s say that in one scheme the government distributes ₹ 1,00,00,000 each to some persons but only ₹ 1,00,000 each to others. In a second scheme, it distributes one rupee each to some persons and one paisa each to others. We are likely to find the first scheme more objectionable than the second despite the fact that in both schemes some persons get hundred times more money than others. Should we similarly not be so

²² Michel L. Balinski & H. Peyton Young, *Fair Representation: Meeting the Ideal of One Man, One Vote* (2nd edn, Brookings Institution Press 2001) (discussing various methods to allocate seats when it is unclear how to round off fractional shares).

²³ Harry Brighouse & Marc Fleurbaey, ‘Democracy and Proportionality’ (2010) 18(2) *The Journal of Political Philosophy* 137; Estlund (n 18) Chapter 11.

²⁴ Bickerstaff (n 13) Chapter 5.

²⁵ Andreas Bengtson, ‘One person, one vote and the importance of baseline’ *Inquiry: An Interdisciplinary Journal of Philosophy* (2022) <www.tandfonline.com/doi/epdf/10.1080/0020174X.2022.2157326?needAccess=true> accessed 6 August 2024.

²⁶ Rehfeld (n 7) 178.

²⁷ Christopher G. Griffin, ‘Debate: Democracy as a Non-Instrumentally Just Procedure’ (2003) 11(1) *The Journal of Political Philosophy* 111. For a more advanced discussion on democracy as a public realisation of equality, see Thomas Christiano, *The Constitution of Equality: Democratic Authority and its Limits* (Oxford University Press 2008).

²⁸ Discussed and rejected in Estlund (n 18) Chapter 4.

²⁹ Ben Saunders, ‘Democracy, Political Equality, and Majority Rule’ (2010) 121(1) *Ethics* 148 (discussing the possibility of a specific scheme called “lottery voting” and making useful distinctions between the concepts of democracy, political equality, and majority rule) (‘Saunders’).

³⁰ Rehfeld (n 7) 192-95.

³¹ Ronald Dworkin, *Justice for Hedgehogs* (Harvard University Press 2013) 390 (‘Dworkin II’).

³² Rehfeld (n 7) 195.

concerned with equalising voting power because individual votes do not make much of a difference in big elections?³³

It is important to keep this consideration in mind because it highlights something significant about why we nonetheless feel concern regarding the distribution of small powers. The allocation of money in shares of one rupee and one paise per person may be unequal, but we do not think it significantly affects the financial power of an *individual*. However, it is easy to see how even a small inequality in individual shares can become significant when it is *aggregated* across hundreds of millions of persons *along the lines of social groups*. These small differences add up and create big differences between the levels of power that different groups hold. We thus have good reason to think that our objection to inequality in voting power “does not apply at the level of the individual, but rather at the level of the group”.³⁴ Immediately below, we try to explain why looking at the electoral power of groups matters in the context of delimitation. The aim is to encourage readers to look beyond the individualistic dimension of electoral representation. It will then become clearer why we should think about the apportionment of seats to states along these lines as well.

4. Groups in Democratic Politics

Delimiting constituencies so they have equal population levels upholds the “one person, one vote” principle. But a voter’s electoral power can be diluted not only on the basis of the *number* of other persons in their constituency, but also on the basis of *who* those other persons are and what political preferences they hold. The boundaries of constituencies can intentionally be defined in such a way that groups of like-minded voters who could have become electoral majorities in one or more constituencies are either split up so that they do not form a majority in any constituency or concentrated into one constituency so as to reduce their influence in others.

Consider an example. Imagine two neighbouring constituencies, A and B, each with 100 voters who must choose between the Sun Party and the Rain Party in elections. The voters in A are known to be split 55-45 in favour of the Sun Party, while in B they are split 70-30 in favour of the Rain Party. If constituency boundaries are redrawn so that 10 Sun supporters are moved from A to B, and 10 Rain supporters are moved from B to A, the result is that the Rain Party is now supported by a majority of voters in both A (55 out of 100) and B (60 out of 100). Both its candidates can win their elections more easily. The Sun Party, which earlier had a majority in A, now has a minority of supporters in both constituencies. Despite the total population of each constituency remaining the same, Sun supporters will likely have less representation in the legislature now because their favoured candidates have been set up to lose.

When the boundaries of constituencies are manipulated in a biased manner to favour certain political actors, election results can be decided not so much by voters as by those who drew the boundaries. This kind of boundary manipulation is called *gerrymandering*, though the term can also arguably be used for biased allocation of seats.³⁵ Indeed, while delimitation and apportionment can seem like two different subjects, there are fundamental similarities between them to consider. In particular, *if we can accept that groups can be relevant to political equality in delimitation, we should also be able to see their relevance to apportionment*. In the case of apportionment, we already have predefined groups that deserve fair political representation: states.

Even if each voter has exactly one vote and all votes are equal in weight, individuals may end up with unequal political power because of the groups they are a part of. “[O]ne person’s vote [can be] more likely to be pivotal than another’s, simply because of how others vote”, such as when “a bloc of voters always votes together, effectively becoming one person with a more-weighty vote.”³⁶ In the case of apportionment, this problem arises because voters in different states have differing political preferences instead of common national ones. To the extent that voters in more populous states are “voting together”, they reduce the influence of voters in less populous states by converting them into permanent minorities. Once again, it is not so much the numbers

³³ This analogy and its implications are drawn from Rehfeld (n 7) 195-97.

³⁴ Rehfeld (n 7) 197-98.

³⁵ Bickerstaff (n 13) 9.

³⁶ Saunders (n 29) 155.

that decide whether an individual has equal say in an election as the accident of which region and community a person has been born into. Politically significant groups of people who share values, concerns, and cultural traits are called “communities of interest”, and many jurisdictions ensure fair and effective representation by protecting such communities in delimitation.³⁷ In the apportionment of seats in Parliament, states should be considered as legitimate communities of interest.

Alongside this similarity between delimitation and apportionment, there is also a critical difference. Even when there is gerrymandering in delimitation, voting equality and political equality do not necessarily conflict so long as we can redraw constituency boundaries to ensure “one person, one vote” while simultaneously making adjustments to afford groups fair representation. It is important to understand, however, that we cannot always avoid the conflict between voting equality and political equality in this manner. This could happen, for instance, in the case of apportionment of seats to states. State boundaries cannot be redrawn to fully achieve political equality because states are meant to be more stable communities and themselves form part of larger regional communities. When apportionment is proportionate to population it can sometimes mean that voters in less populous states and regions will necessarily always have unequal influence in deciding national elections when compared to voters in more populous states and regions.

5. A Balanced Approach?

Does the discussion above mean that groups themselves have to be treated as equals regardless of their population sizes? Probably not. Fair representation for groups cannot completely replace the ideal of equality in the voting power of individual voters, and it is not our intention to suggest this. Rather, these issues bring to the fore a fundamental question: *when we demand political equality for individuals, what is it that we want to equalise?* Equality in political power is a controversial aim because “the question of how political power should be measured to decide whether it is equal, is itself controversial”.³⁸ If it were only a question of voting power, “one person, one vote” would be enough. However, political equality can also be about *equal chances of being represented by your favoured candidate in the legislature or even equal chances of having your favoured policy implemented.*³⁹ What does it mean to have such “equal chances”?

Most likely, we cannot be said to have equal chances to shape political decisions if the extent of our influence is completely determined by the population level of the state or region we are born into. It should be remembered that, in the case of delimitation, these kinds of controversies “only appear when the likely political preferences of voters are taken into account”, and as a result of “the distribution of preferences across territorial constituencies”.⁴⁰ In the case of apportionment of seats to states, the same issue comes up when voters in different states have different preferences regarding national policymaking. Suddenly, seemingly “impartial” criteria for the distribution of political power (e.g., numerical equality or population-proportionality) in effect turn out to be partial because political outcomes are decided by “the existing spatial distribution of interests”.⁴¹ Against this charge of partiality made today, it is no excuse at all that the population differences may somehow invert after decades or centuries. Where preferences for national policies differ from state to state and region to region, unbridled population-proportionality would mean that geographically-defined voting blocs decide national elections and not the supposedly fair principle of equal weight to individual votes.

One solution to this dilemma is that we should recognise both the importance of equal political status (through the numerical equality of voting power) as well the importance of equal treatment of different interests in society (through equal chances of electoral or policymaking success). This can be done by adjusting the political

³⁷ Stephen J. Malone, ‘Recognizing Communities of Interest in a Legislative Apportionment Plan’ (1997) 83(2) *Virginia Law Review* 461; Daniel W. Phillips & Daniel R. Montello, ‘Defining the community of interest as thematic and cognitive regions’ (2017) 61 *Political Geography* 31; Sandra J. Chen, Samuel S.-H. Wang, Bernard Grofman, Richard F. Ober, Jr., Kyle T. Barnes, Jonathan R. Cervas, ‘Turning Communities of Interest into a Rigorous Standard for Fair Districting’ (2022) 18 *Stanford Journal of Civil Rights & Civil Liberties* 101.

³⁸ Dworkin I (n 12) 189.

³⁹ Beitz (n 12) 8-11 and Chapter 7.

⁴⁰ Beitz (n 12) 144.

⁴¹ Beitz (n 12) 147.

system to “increase the chances that ... minorities will at least have a legislative voice” and create the conditions under which “the chances of predictable injustice are minimized”.⁴² The specific scheme that should be followed to achieve such protection can depend on “the severity of the likely impact of the compensatory scheme on public perceptions of the political status of those disadvantaged by it, the gravity of the threat to the minority in the absence of such a scheme, and the availability of less drastic alternatives”.⁴³ Such an approach to minimising harm could, for example, ensure minority protections insofar as it does not violate equality in voting power, as when the representation of minorities is promoted through delimitation without having constituencies with unequal population size. In this example, voting equality and political equality can be achieved simultaneously.

Minority protections could, however, also go further if we recognise that political equality does not operate on a distinct and alien dimension that is “detached” from various social and economic forms of inequality.⁴⁴ Under this view, constituencies could even sometimes be delimited to have unequal population sizes if this ensures more representation for a disadvantaged group and produces “more just” and “more genuinely egalitarian” political decisions without depriving advantaged groups of their agency, symbolic recognition, or sense of community.⁴⁵ Once again, the same principle is applicable to apportionment of seats to states as well. If persons in sparsely populated parts of the country “have [policy] interests special to them that would be neglected or overridden” regularly in elections because of rigid, numerical equality in voting power, it may make sense to allow for “judicious gerrymandering” (or compensatory apportionment of additional seats) in favour of such citizens “by a deliberate choice for special and limited inequalities”.⁴⁶ In other words, “less drastic alternatives” aren’t always available and we may have to compromise to some extent on equal voting power to promote the equal consideration of diverse interests in society. In this way, democratic governance can be viewed more as a form of partnership between communities and their members than simply as a majority-minority question.⁴⁷

These arguments bring us squarely back to our fundamental concern in this report: the question of how political equality and federalism can sometimes seem to be in fundamental conflict with each other. In a distinct sense, this happens because population-proportionality encourages a kind of “statistical mirroring” between population levels and the distribution of powers and resources.⁴⁸ Treating population-proportionality as a target or ideal can ensure that majorities in society have a “statistical guarantee” of power while minorities are always lacking in power.⁴⁹ We should instead consider that the question of proportionality better serves as a diagnostic tool for identifying potential problems of inequality.⁵⁰ What should our idea of political equality be if not population-proportionality? *We could instead see political equality as a form of protection against the domination of some people over others based on their social identity.* As it happens, domination is precisely the language in which India has long framed fears of regional imbalances in national governance.⁵¹ Under an approach of “non-domination”, political equality would protect autonomy in the public sphere in the same way that traditional liberties protect autonomy in the private sphere.⁵² If we ask ourselves how autonomy in the

⁴² Beitz (n 12) 157 (reflecting that this does not require proportionality in representation, and is only meant as a “compromise between recognition of political status and concerns about equitable treatment”).

⁴³ Beitz (n 12) 158.

⁴⁴ Dworkin I (n 12) Chapter 4.

⁴⁵ Dworkin I (n 12) 188.

⁴⁶ Dworkin I (n 12) 205-06

⁴⁷ Dworkin II (n 31) Chapter 18.

⁴⁸ Danielle Allen & Rohini Somanathan, ‘Introduction’ in Allen and Somanathan (eds), *Difference without Domination: Pursuing Justice in Diverse Democracies* (University of Chicago Press 2020) 7-9 (‘Allen and Somanathan’).

⁴⁹ Heather Gerken, ‘Second-Order Diversity: An Exploration of Decentralization’s Egalitarian Possibilities’ in Allen and Somanathan (eds), *Difference without Domination: Pursuing Justice in Diverse Democracies* (University of Chicago Press 2020) 230 (‘Gerken’).

⁵⁰ Allen and Somanathan (n 48) 7-9.

⁵¹ Ambedkar (n 5) Chapter 5 (‘Can the South tolerate the dominance of the North?’).

⁵² Danielle Allen, ‘A New Theory of Justice: Difference without Domination’ in Allen and Somanathan (eds), *Difference without Domination: Pursuing Justice in Diverse Democracies* (University of Chicago Press 2020).

public sphere can be expanded, we may find that strengthening structures like federalism can actually advance political equality significantly. More on this below.

6. Population Control, Revenue Sharing, and Federalism

Comparative study informs us that more than a few democracies have ignored, avoided or delayed compliance with legal requirements to delimit constituencies or reallocate seats.⁵³ In this regard, it is also worth keeping in mind that at least one earlier study did not find India to be amongst the most extreme or egregious cases of malapportionment,⁵⁴ though an updated study may be needed to understand whether this position has changed since then. It is important to examine the rationale offered by political actors and the reasoning employed in public discussion on the subject because of how it has departed from principled engagement with the question of political equality.

The official rationale that was offered by Parliament for the postponement of reallocation of seats to states was the idea that it would motivate State Governments to pursue population control measures.⁵⁵ It remains one of the primary reasons offered by many who oppose population-proportionate apportionment for the Lok Sabha.⁵⁶ But it is difficult to accept this rationale when one considers both the weight of the sacrifice it demands and the efficacy of the means it prescribes. The link between population control and voting equality is “far too tenuous” and holding the latter hostage to achieve the former would be “clearly indefensible”.⁵⁷ Individuals in a state who have had fewer or no children cannot be collectively punished for the actions of their State Government, the reproductive choices of other residents in their state, and the contribution of migration as well as other socio-economic and historic determinants to population changes.⁵⁸ More significantly, penalising voting power to promote population control would most likely infringe the fundamental right to reproductive autonomy.⁵⁹

A second set of concerns in this context is that reapportionment would aggravate the problems of inequality in revenue collection and sharing between states. In this view, the more prosperous, less populous states would be doubly penalised: both in terms of the loss of political power and from their continued (or even increased) subsidisation of the less prosperous, more populous states.⁶⁰ Some argue that even if richer states favour

⁵³ Bickerstaff (n 13) Chapter 8.6.

⁵⁴ David Samuels & Richard Snyder, ‘The Value of a Vote: Malapportionment in Comparative Perspective’ (2001) 31(4) *British Journal of Political Science* 651.

⁵⁵ See, The Constitution (Eighty-Fourth Amendment) Act, 2001, Statement of Objects and Reasons, Paragraph 2 – “Keeping in view the progress of family planning programmes in different parts of the country, the Government, as part of the National Population Policy strategy, recently decided to extend the current freeze on undertaking fresh delimitation up to the year 2026 as a motivational measure to enable the State Government to pursue the agenda for population stabilisation.”

⁵⁶ The Hindu Bureau, ‘Delimitation based on population is irrational, injustice to southern States: KTR’ *The Hindu* (30 May 2023) <<https://www.thehindu.com/news/national/telangana/delimitation-based-on-population-is-irrational-injustice-to-southern-states-ktr/article66911309.ece>> accessed 23 June 2024 (quoting K.T. Rama Rao as saying “It is unfortunate that the southern States which followed the Centre’s policies to control the population growth are going to be punished for the same in the delimitation of constituencies.”); K.V. Chandramouli, ‘Thwart potential injustice to the South’ *Deccan Herald* (22 November 2023) <<https://www.deccanherald.com/opinion/thwart-potential-injustice-to-the-south-2780156>> accessed 23 June 2024 (“[T]he southern states, which have for decades used a progressive set of policies to manage population growth, stand to suffer grave injustice. Delimitation would be advantageous to the northern states that have disregarded the central government’s population control policies...”).

⁵⁷ Alistair McMillan, ‘Delimitation in India’ in Lisa Handley and Bernard Grofman (eds), *Redistricting in Comparative Perspective* (Oxford University Press 2008) 87.

⁵⁸ Aditi, ‘Politics of Electoral Reform: Delimitation Deadlock in India’ (2015) 2(2) *SOAS Law Journal* 46, 55 (‘Aditi’).

⁵⁹ While the Supreme Court of India had upheld qualifications based on number of children for standing for elections in *Javed v. State of Haryana*, (2003) 8 SCC 369, there has been significant development since then in the position of the right to privacy, including the right to reproductive autonomy, for example, in *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1 and *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1. See also, Alok Prasanna Kumar, ‘Demography, Democracy and Population Policies’ (2021) 56(30) *Economic & Political Weekly* 10.

⁶⁰ Nilakantan RS, ‘Why south India outperforms the north’ *BBC* (21 September 2022) <www.bbc.com/news/world-asia-india-62951951> accessed 24 June 2022 (“[A]long with revenue loss and lack of freedom to make their own policies, the prosperous south may have fewer seats in parliament in the future”); Subhashish Bhadra, ‘India’s South Has Wealth, but the North Has the Numbers’ *Fair Observer*, 26 January 2024) <www.fairobserver.com/world-news/india-news/indias-south-has-wealth-but-the-north-has-the-numbers/> accessed 24 June 2024 (“Even as South India subsidizes North India, this

transfers for the purpose of equity, poorer states are not catching up by growing faster than them.⁶¹ On the other hand, it is pointed out that the overlap between prosperity and low population growth is not so neat,⁶² that prosperous states have benefitted from migrant labour and a common market⁶³ as well as favourable industrial policies in the past,⁶⁴ and that they are probably still advantaged by the availability of credit and greater non-budgetary flow of resources.⁶⁵ At a more fundamental level, however, is voting equality a value that is weak enough to be made contingent on a fairer deal in fiscal matters? As discussed above, it is true that political equality cannot operate in a world isolated from other socio-economic considerations. However, just as in the case of population control, we need to consider the relative weight of the sacrifice demanded in attaining a seemingly valuable goal. Considered from the point of view of the individual voter in a poor state, it would seem that reduced political power actively penalises poverty and discriminates on the ground of socio-economic disadvantage.⁶⁶ With a larger constituency, it can be more difficult for voters to hold their representative accountable for specific issues and this weakened accountability may further worsen governance outcomes for a poor region.⁶⁷

There remains, however, a more significant principle at stake in this equation: federalism. Here, we refer not just to fiscal federalism but political federalism as well. The former is a necessary but insufficient consideration in addressing the problem of apportionment. As a result of its basic characteristics, federalism operates as a form of government that is non-majoritarian in that it provides national minorities with additional political power in a specific sphere.⁶⁸ But it nonetheless enjoys widespread legitimacy. Any attempt to design democratic institutions for India should enable its citizens to arrive at different balances between the integration and accommodation of social differences over time, and federalism can play a crucial role in such balancing because of how it serves as a “malleable proxy” for group identity.⁶⁹ It can protect vulnerable minorities, allow for flexibility and movement between groups, and thus provide a “built-in mechanism that enables a democratic system to be responsive to diminished ethnic conflict over time”.⁷⁰ Federalism is an apt mechanism for ensuring that minorities do not become “democracy’s consistent losers”, and it does this by providing spaces for a form of “second-order” diversity in which “national minorities can constitute local

more prosperous part of the country is losing political power.”); PTI, ‘Enlightened leadership needed to resolve north-south divide on distribution of tax pool: Ex-RBI Guv Duvvuri Subbarao’ *The Economic Times* (1 May 2024) <<https://economictimes.indiatimes.com/news/india/enlightened-leadership-needed-to-resolve-north-south-divide-on-distribution-of-tax-pool-ex-rbi-guv-duvvuri-subbarao/articleshow/109751227.cms>> accessed 24 June 2024 (“[T]he southern states ... will face the double whammy of reduced political clout combined with an open-ended commitment to cross subsidization.”).

⁶¹ Palanivel Thiaga Rajan, ‘Has Uttar Pradesh’s economy surpassed Tamil Nadu’s?’ *Frontline* (7 February 2024) <<https://frontline.thehindu.com/economy/uttar-pradesh-economy-comparison-with-tamil-nadu-south-india/article67821390.ece>> accessed 24 June 2024.

⁶² Tadit Kundu, ‘Revenue sharing: Are states in South India being taken for a ride?’ *Mint* (19 April 2018) <www.livemint.com/Politics/MKiui1AyJUiWNsayS0wcMK/Revenue-sharing-Are-states-in-South-India-being-taken-for-a.html> accessed 24 June 2024.

⁶³ ET Bureau, ‘North-South, real gaps, false binary’ *The Economic Times* (7 December 2023) <<https://economictimes.indiatimes.com/opinion/et-editorial/north-south-real-gaps-false-binary/articleshow/105820526.cms>> accessed 24 June 2024.

⁶⁴ Revant Khullar, ‘Fabricated Poverty’ *Spontaneous Order* (9 July 2021) <<https://spontaneousorder.in/fabricated-poverty/>> accessed 24 June 2024.

⁶⁵ Pinaki Chakraborty, ‘Transfer of Budgetary Resources to States: Is it North vs South or North and South?’ *The India Forum* (17 April 2024) <www.theindiaforum.in/economy/transfer-budgetary-resources-states> accessed 24 June 2024.

⁶⁶ United Nations General Assembly, *Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, A/77/157* (13 July 2022) <<https://digitallibrary.un.org/record/3983713?ln=en&v=pdf>> accessed 6 August 2024.

⁶⁷ Aditi (n 58) 57.

⁶⁸ Arend Lijphart, ‘Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories’ (1985) 15(2) *Publius* 3.

⁶⁹ Richard H. Pildes, ‘Ethnic identity and democratic institutions: A dynamic perspective’ in Sujit Choudhry (ed), *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford University Press 2003) 198 (‘Pildes’).

⁷⁰ Pildes (n 69) 198-99.

majorities”.⁷¹ This represents, in particular, what may be called a “pluralist” federation: a federation in which the internal boundaries respect nationality, ethnicity, language, or religion.⁷²

This can make it seem like decentralisation is only about how local questions are answered so that bigger questions are left to the national government. But the communities that constitute these decentralised units have stakes that go beyond the local. As the problem of apportionment in the Indian Parliament illustrates, states can come into conflict with each other when we try to determine how much power or voice each of them has in unitary institutions. In the section below, we explain how this question can be looked at more clearly. Readers will be able to see how significant this problem becomes within the specific contexts in which Indian democracy and federalism operate.

⁷¹ Gerken (n 49) 227.

⁷² John McGarry, Brendan O’Leary & Richard Simeon, ‘Integration or accommodation? The enduring debate in conflict regulation’ in Sujit Choudhry (ed) *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford University Press 2003) 63-67.

III. The Unique Contexts of Parliament and Indian Federalism

Discussions around delimitation as well as allocation of seats in India's popularly-elected legislative houses need to be undergirded by a thorough understanding of Indian federalism. This section begins with a discussion of how the Constitution envisaged the Indian Parliament to be, and how both houses of Parliament were to be placed within the scheme of representative democracy in India. This is followed by an overview of existing constitutional and statutory requirements concerning delimitation, along with a factual description of how we got to the constitutional freeze on any future apportionment of seats in Parliament and state Legislative Assemblies. Then, to contextualise some of the challenges that any impending delimitation and apportionment of seats will have to contend with, this section dives into an analysis of federalism in India. Owing to several factors, the balance of relations between both the Centre and the states, as well as between states themselves, has remained fragile. The tensions apparent in intergovernmental relations in India have a bearing on discussions around delimitation, as will be demonstrated in the last part of this section.

1. The constitutional vision for the Lok Sabha and the Rajya Sabha

India's Constitution favours the "one person, one vote" principle, and the Supreme Court has held that this principle envisages some degree of parity in the value of votes of electors.⁷³ Adherence to the principle of equal representation in voting⁷⁴ is guaranteed by mandating that each state receive seats in proportion to its population and that those seats are allocated to constituencies of roughly equal size.⁷⁵

The framers of the Constitution voiced several views related to the composition of the two houses of Parliament, and this is of immediate significance to the subject of this report. Some of the earliest recommendations on the composition of Parliament came from the Union Constitution Committee ('UCC').⁷⁶ The UCC recommended that the popularly elected lower house should consist of not less than 400, and not more than 500 members, while the upper house have 250 members.⁷⁷ Electoral constituencies for the lower house were recommended to be "delimited on the basis of homogeneity, contiguity and population strengths".⁷⁸

Article 67 of the Draft Constitution,⁷⁹ which was debated between 3-4 January 1949, dealt with the composition of both houses of Parliament. While initially conceptualised as one combined Article 67, this provision was eventually split across Articles 80 (*Composition of the Council of States*) and 81 (*Composition of the House of the People*) of the final Constitution. On delimitation, an earlier provision of the Draft Constitution stipulated that one Lok Sabha representative would be available for every 7,50,000 people, and not more than one for every 5,00,000 people.⁸⁰ The parity principle also found mention in the Draft Constitution under the requirement that the ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census would be, within the limits of practicability, the same throughout India.⁸¹ It is worth mentioning that certain constituencies in both Lok Sabha and state Legislative Assemblies were dual-member constituencies. These constituencies had two representatives, one of whom belonged to either the Scheduled Castes or Scheduled

⁷³ R.C. Poudyal v. Union of India, 1994 Supp (1) SCC 324. The specific contours and implications of this finding are discussed in the next section of this report.

⁷⁴ Association for Democratic Reforms v. Union of India, 2024 INSC 113, para 96 (Chandrachud, C.J.).

⁷⁵ Constitution of India 1950, Articles 81 and 170.

⁷⁶ The Union Constitution Committee was appointed by the President of the Constituent Assembly in pursuance of the resolution of the Assembly dated 30th April, 1947, to report on the main principles of the Union Constitution. See, Constituent Assembly of India Debates, vol. 3, 30 April 1947 ([ConstitutionofIndia.net](http://www.constitutionofindia.net)) <www.constitutionofindia.net/debates/30-apr-1947/#86687> accessed 2 June 2024.

⁷⁷ B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (first published 1967, Universal Law Publishing Co Pvt Ltd 2012) vol 2, 557 ('Shiva Rao').

⁷⁸ Shiva Rao (n 77) 557.

⁷⁹ Draft Constitution of India 1948, 21 February 1948 <www.constitutionofindia.net/committee-report/draft-constitution-of-india-1948/> accessed 19 June 2024.

⁸⁰ Draft Constitution of India 1948, Article 67(5)(b).

⁸¹ Draft Constitution of India 1948, Article 67(5)(c).

Tribes. Dual-member constituencies were a means to reserve some seats in areas which had a sizeable population of Scheduled Castes and Scheduled Tribes, and were eventually abolished in 1961,⁸² through the Two-Member Constituencies (Abolition) Act, 1961.

DRAFT CONSTITUTION OF INDIA, ARTICLE 67, CLAUSE (5)

- (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters.
- (b) For the purpose of sub-clause (a), the States of India shall be divided, grouped or formed into territorial constituencies and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population:
Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.
- (c) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India.

While the Constitution does fix a maximum number of members for both houses of Parliament, the stipulation of this number was opposed by certain members of the Constituent Assembly. Most prominently, KT Shah argued that with the steady increase in population recorded in previous censuses, fixing an absolute maximum number would undesirably change the number of persons represented by each member.⁸³ Representation of large numbers of voters, when concentrated on a single member, could compromise giving effective expression to people's concerns around a multiplicity of issues.⁸⁴ Evidently, discussions in the Constituent Assembly around the size of the Lok Sabha echoes the present-day crisis of representation arising out of increased population levels.

Article 81, as it was finally adopted, reiterated the stipulation of the Draft Constitution – that “the number of members to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population.”⁸⁵ Clause (1) of Article 81 stipulated that the Lok Sabha shall not consist of “more than 500 members directly elected by the voters”. This upper limit was placed in the Constitution because of the possibility of variation in the number of electoral constituencies necessitated by increases in population.⁸⁶ As it happens, Article 81 of the Constitution has been amended several times to read the way it does now.

Discussions concerning the Rajya Sabha dealt with both the perceived need for a second house, as well as the number and kind of representatives each state should have in the House. The Rajya Sabha, or Council of States, was to be a permanent body with one-third Members of Parliament ('MPs') retiring every two years,

⁸² Anjishnu Das, 'Women's quota Bill and two-member constituencies: Abolished in 1961, which such seats make a return?' *The Indian Express* (New Delhi, 24 September 2023) <<https://indianexpress.com/article/political-pulse/women-reservation-bill-return-dual-member-constituencies-8952669/>> accessed 8 June 2024.

⁸³ KT Shah, *Constituent Assembly of India Debates*, vol. 7, para 7.79.25, 4 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/04-jan-1949/> accessed 18 June 2024.

⁸⁴ KT Shah, *Constituent Assembly of India Debates*, vol. 7, para 7.79.26, 4 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/04-jan-1949/> accessed 18 June 2024.

⁸⁵ Constitution of India 1950, Art 81(2), Original Manuscript <www.constitutionofindia.net/wp-content/uploads/2023/03/Original-Manuscript-of-the-Constitution-of-India_New1.pdf> accessed 5 June 2024 ('Constitution of India, Original Manuscript').

⁸⁶ KT Shah, *Constituent Assembly of India Debates*, vol. 7, para 7.79.31, 4 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/04-jan-1949/> accessed 18 June 2024.

elected by members of state legislatures in proportion to the population of the states.⁸⁷ Besides elected members, the Rajya Sabha was always envisaged to include representatives of certain key functional interests, who could be nominated by the President.⁸⁸ These nominated members, it was expected, would contribute to discussions as neutral representatives, free from political biases.⁸⁹

Several members, such as HV Kamath⁹⁰ and Mohammad Tahir⁹¹ felt that the Rajya Sabha would entrench colonial and class interests. Jayaprakash Narayan believed that because the Rajya Sabha would be indirectly elected, it would not foster popular accountability.⁹² Simultaneously, there were calls in support of a second chamber on the ground that it could provide sober debate on crucial legislative matters.⁹³ The Constituent Assembly did, eventually, resolve to establish a Council of States. Given that legislating for the country required considerable scrutiny, the Council of States was expected to be a house of 'second thought'.⁹⁴ It was also expected to underline the federal character of the Constitution by serving to represent the states in Parliament.⁹⁵ The reasons for constituting the Council of States were both intrinsic and instrumental, and spoke to the significance of the law-making function as well as providing a platform for states' interests.⁹⁶

Several members, including KT Shah⁹⁷ and Lokanath Misra,⁹⁸ advocated for equality for all constituent parts of the Union in the Rajya Sabha. Shah was of the view that because the Rajya Sabha serves more to represent territories and special interests of the constituent units than it does to represent the people, equal representation of all units was warranted.⁹⁹ At the same time, there were representatives who advocated for allocating seats to states based on their population, but in a manner that would advantage smaller states.¹⁰⁰

Eventually, the recommendation of the UCC on composition of the Rajya Sabha was adopted – that seats in the Rajya Sabha get allotted among the various states and Union territories largely on the basis of population, with one seat for each million people for the first five million, and subsequently, one seat for every two million

⁸⁷ Shiva Rao (n 77) 441.

⁸⁸ Shiva Rao (n 77) 557.

⁸⁹ *Constituent Assembly of India Debates*, vol. 7, 3 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/03-jan-1949> accessed 17 June 2024.

⁹⁰ HV Kamath, *Constituent Assembly of India Debates*, vol. 4, para 4.26.79, 18 July 1947 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/18-jul-1947/> accessed 7 June 2024.

⁹¹ Mohammad Tahir, *Constituent Assembly of India Debates*, vol. 4, para 4.32.109, 28 July 1947 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/28-jul-1947/> accessed 8 June 2024.

⁹² B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (first published 1967, Universal Law Publishing Co. Pvt. Ltd. 2012) vol 4, 90.

⁹³ Naziruddin Ahmad, *Constituent Assembly of India Debates*, vol. 4, para 4.32.118, 28 July 1947 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/28-jul-1947/> accessed 8 June 2024.

⁹⁴ *Constituent Assembly of India Debates*, vol. 4, 28 July 1947 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/28-jul-1947/> accessed 8 June 2024.

⁹⁵ *Constituent Assembly of India Debates*, vol. 4, 28 July 1947 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/28-jul-1947/> accessed 8 June 2024.

⁹⁶ Yashaswini Mittal, Medha Srivastava, Kaushiki Sanyal and Arghya Sengupta, 'Disruptions in the Indian Parliament' (*Vidhi Centre for Legal Policy*, 2016) 54 <https://vidhilegalpolicy.in/wp-content/uploads/2019/05/Report_DisruptionsintheIndianParliament_Vidhi1.pdf> accessed 13 June 2024 ('Mittal and others').

⁹⁷ K.T. Shah, *Constituent Assembly of India Debates*, vol. 7, para 7.78.70, 3 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/03-jan-1949> accessed 17 June 2024.

⁹⁸ Lokanath Misra, *Constituent Assembly of India Debates*, vol. 7, para 7.78.119, 3 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/03-jan-1949> accessed 17 June 2024.

⁹⁹ K.T. Shah, *Constituent Assembly of India Debates*, vol. 7, para 7.78.165, 3 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/03-jan-1949> accessed 17 June 2024.

¹⁰⁰ Shibban Lal Saxena, *Constituent Assembly of India Debates*, vol. 7, para 7.78.115, 3 January 1949 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/03-jan-1949> accessed 17 June 2024.: "...I think that the numbers should be laid down on the basis of population up to a limit and that is why I have laid down the limit of one representative for every million up to seven millions, and after that, one representative for every two millions of the population. In this way, we can see to it that the bigger States have lesser numbers of representatives and the smaller States shall get a little weightage which we want to give them..."

population.¹⁰¹ While the results of this formula slightly advantage states with smaller population over the ones with a larger population, the requirement is not explicitly laid down in the text of the Constitution itself. Members of the Rajya Sabha are elected by the elected members of state Legislative Assemblies through a system of proportional representation by means of a single transferable vote.¹⁰² The Fourth Schedule to the Constitution lists out the number of seats that have been allotted to each state in the Rajya Sabha, though the formula laying down the relative shares has not been codified.

2. The development of constitutional delimitation requirements

The Constitution, through Article 81,¹⁰³ mandates that each state receive seats in proportion to its population and allocates those seats to constituencies of roughly equal size. This provision also mandates that the number of people in each constituency be constant for a state.¹⁰⁴ To divide these seats proportionally, Article 82¹⁰⁵ of the Constitution calls for the reallocation of seats after every census based on updated population figures. Provision for the composition of state Legislative Assemblies is made under clause (3) of Article 170, which authorises Parliament to enact laws after each census for the readjustment of the total number of seats in a Legislative Assembly of a state as well as the division of the state into territorial constituencies. Delimitation of territorial constituencies is subject to Articles 330 and 332 of the Constitution. These provisions respectively mandate that seats in the Lok Sabha and the state Legislative Assemblies shall be reserved for Scheduled Castes and Scheduled Tribes. The ratio of reserved seats to the total number of seats in each state is required to roughly be the same as the ratio of population of Scheduled Castes or Scheduled Tribes to the population of the state.

With the broad principles set out by the Constitution, the specifics of how delimitation is to be practically carried out finds mention under delimitation laws enacted by Parliament. Under Article 327 of the Constitution, Parliament has been empowered to enact laws relating to delimitation of constituencies. Till date, four Delimitation Acts have been passed by Parliament, one each in 1952, 1962, 1972, and 2002.¹⁰⁶ These Acts provided for the apportionment of seats in the Lok Sabha and state Legislative Assemblies through the institution of a Delimitation Commission, which is tasked with drawing constituency boundaries and framing guidelines which should undergird this exercise. The decisions of the Delimitation Commission are issued as Delimitation Orders, which fix both Lok Sabha and assembly constituencies at a certain number. For instance, the Delimitation Order of 1956 fixed the number of Lok Sabha constituencies at 494, and assembly constituencies at 3,102.¹⁰⁷ This order was issued in December 1956, ahead of the second general elections.¹⁰⁸

¹⁰¹ *Constituent Assembly of India Debates*, vol. 7, 3 January 1949 (ConstitutionofIndia.net) <www.constitutionofindia.net/debates/03-jan-1949> accessed 17 June 2024. Shiva Rao (n 77) 566.

¹⁰² Constitution of India 1950, Article 80, clause (4) – *The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.*

¹⁰³ Constitution of India 1950, Article 81, clause (2)(a) – *For the purposes of sub-clause (a) of clause (1), – (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...*

¹⁰⁴ Constitution of India 1950, Article 81, clause (2)(b) – *For the purposes of sub-clause (a) of clause (1), – (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...*

¹⁰⁵ Article 82 of the Constitution concerns Readjustment after each census and reads as follows: Constitution of India 1950, Article 82: *Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine...*

¹⁰⁶ Suvrajyoti Gupta, 'Drawing Electoral Boundaries in India: Institutions and Laws' in Mohd. Sanjeer Alam and K.C. Sivaramakrishnan (eds), *Fixing Electoral Boundaries in India: Laws, Processes, Outcomes, and Implications for Political Representation* (Oxford University Press 2015) 50.

¹⁰⁷ K.C. Sivaramakrishnan, 'Delimitation in India: A Politico-historical Overview' in Mohd. Sanjeer Alam and K.C. Sivaramakrishnan (eds), *Fixing Electoral Boundaries in India: Laws, Processes, Outcomes, and Implications for Political Representation* (Oxford University Press 2015) 66 ('Sivaramakrishnan').

¹⁰⁸ Sivaramakrishnan (n 107) 66.

It was in 1975 that the number of Lok Sabha and state assembly seats was last changed. The Delimitation Commission set up in 1972 fixed the number of Lok Sabha seats at 542, and assembly seats across states to 3997.¹⁰⁹ With the addition of one more seat for Sikkim, the number of Lok Sabha seats was eventually increased to 543, and has stayed put at that since 1976.¹¹⁰ As discussed previously, the Forty-second Amendment to the Constitution ('42nd Amendment, 1976') relaxed the mandate for delimitation as well as for allocation of seats until the year 2001. The 42nd Amendment, 1976 did this by inserting provisos to Articles 82¹¹¹ and 170(3),¹¹² which effectively deferred further delimitation and allocation of seats (in Parliament as well as state assemblies) until after the census scheduled for 2001.¹¹³ This freeze on delimitation was effected to allay the concerns of states which took a lead in population control and who were faced with the prospect of reduction of their seats in the Lok Sabha.¹¹⁴ It was hoped that the country would have achieved uniform population growth across states in time for the next delimitation (and subsequent allocation of seats).

Around the time when the fourth delimitation was due, two key amendments to the Constitution were made – the Eighty-fourth Amendment Act, 2002 ('84th Amendment, 2002'),¹¹⁵ and the Eighty-seventh Amendment Act, 2003 ('87th Amendment, 2003').¹¹⁶ The 84th Amendment, 2002 mandated that the impending delimitation would be conducted on the basis of the census of 1991. The 1991 census was consciously chosen because the 2001 census was expected to take time to finalise, and waiting for those figures would have delayed delimitation by several years.¹¹⁷ As required, a Delimitation Commission was constituted in 2002, by means of a Delimitation Act passed that year.¹¹⁸ Significantly, it was through the 84th Amendment, 2002 that the freeze on readjusting the number of seats in the Lok Sabha as well as the state Legislative Assemblies was continued till the first census after 2026.¹¹⁹

However, given that the provisional results of the 2001 census were already available, the proposed use of the 1991 census became a subject of intense scrutiny.¹²⁰ Eventually, owing to doubts around using figures from 1991 as well as simultaneously persisting concerns around transparency in its functioning, the work of the Delimitation Commission was brought to a halt.¹²¹ An all-party meeting was convened by the then Union

¹⁰⁹ Delimitation of Parliamentary and Assembly Constituencies Order, 1976, Schedule I and Schedule II <<https://www.eci.gov.in/eci-backend/public/api/download?url=LMAhAK6sOPBp%2FNFF0iRfXbEB1EVSLT41NNLrjYNNJP1KivrUxbfqkDatmHy12e%2FzVx8fLfn2ReU7TfrqYobglrAKrpRHHL6YJ4Q5EEVH2zMUwwV41By7LxYIONuVC9Vr%2F%2BN7sXnVcBsMXglVrEWgvc h1zBtwm72mAwODimlm7Nzk%2BznQQZFhtTvKNHJqel%2BB>> accessed 12 August 2024 ('DPARO, 1976'). See also, Sivaramakrishnan (n 107) 67.

¹¹⁰ DPARO, 1976 (n 109).

¹¹¹ Constitution (Forty-second Amendment) Act, 1976, section 16 inserted the following provisos to Article 82: *Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment:*

Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies under this article.

¹¹² Constitution (Forty-second Amendment) Act, 1976, section 29 inserted the following provisos to Article 170(3): *Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.*

¹¹³ Sivaramakrishnan (n 107) 69.

¹¹⁴ Sivaramakrishnan (n 107) 69.

¹¹⁵ The Constitution (Eighty-fourth Amendment) Act, 2001 <www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-fourth-amendment-act-2001> accessed 12 August 2024.

¹¹⁶ The Constitution (Eighty-seventh Amendment) Act, 2003 <www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-seventh-amendment-act-2003> accessed 12 August 2024.

¹¹⁷ Sivaramakrishnan (n 107) 74.

¹¹⁸ Delimitation Act, 2002 <<https://www.indiacode.nic.in/bitstream/123456789/2004/1/A2002-33.pdf>> accessed 6 August 2024.

¹¹⁹ Provisos to Articles 82 (third proviso) and 170(3) (third proviso) were inserted by the 84th Amendment, 2002.

¹²⁰ Sivaramakrishnan (n 107) 75.

¹²¹ Sivaramakrishnan (n 107) 75.

Minister for Law and Justice, which concluded with the decision to use the 2001 census figures for the impending delimitation.¹²² Subsequently, the Constitution was amended again – this time through the 87th Amendment, 2003 – to provide for using 2001 census figures for the impending delimitation.¹²³ Despite this change, however, the Delimitation Commission was still expected to work within the freeze on the number of seats in both the Lok Sabha as well as state Legislative Assemblies, put in place by the 42nd Amendment, 1976. The Commission had to readjust constituency boundaries (of both the Lok Sabha as well as state Legislative Assemblies) within the total number of seats that had been fixed in 1976.¹²⁴ Essentially, then, while apportionment of seats in the Lok Sabha (between the states) and the state Legislative Assemblies (within the states) is on hold till 2026, delimitation of constituency boundaries within each state could (and was expected to) continue.

The last delimitation law was passed in 2002 (and amended in 2003) and, as mandated collectively by the 84th Amendment, 2002 and 87th Amendment, 2003 to the Constitution, delimitation under that law sought to readjust the boundaries of territorial constituencies to reflect population changes without modifying the apportionment of either Lok Sabha or state Legislative Assembly seats.¹²⁵ Owing to a combined effect of these changes, more than four decades have elapsed since any change in the number of seats apportioned to India's popularly-elected legislatures. While the first census after 2026 should ideally be conducted in 2031, it is worth mentioning that the census that was to happen in 2021 was postponed owing to COVID-19. At a special session of the Parliament in 2023, it was indicated that the pending 2021 census would take place after culmination of the 2024 Lok Sabha elections.¹²⁶

3. *Contours of and trends in Indian federalism*

As hinted at in the previous section, our study of the question of apportionment of seats in the Lok Sabha is incomplete without a more holistic picture of where Indian federalism currently stands. Any failure to account for this factor would only result in proposals that risk causing unintended (but nonetheless irreparable) injury to a constitutional structure that is already lopsided and fragile. The reasons for this threat are outlined below.

Discussions around the nature of Indian federalism commence with the caveat that the Constitution of India was framed during the Partition, amidst a foundational threat posed by states exhibiting “fissiparous tendencies”.¹²⁷ As a result, the Constituent Assembly adopted a centralised federal model where residuary powers lie with the Union government, enabling it to take decisive action for securing national integrity.¹²⁸ The intent was to have a strong national government which could enable India to tide over social, political and economic crises, while simultaneously ensuring adequate division of power between different tiers of government. A stronger centre was felt particularly necessary given India's vast religious, linguistic, caste-

¹²² Sivaramakrishnan (n 107) 72-76.

¹²³ Sivaramakrishnan (n 107) 75.

¹²⁴ Sivaramakrishnan (n 107) 76. See also, Sanjay Kumar, 'Fourth Delimitation of Electoral Constituencies' in Mohd. Sanjeer Alam and K.C. Sivaramakrishnan (eds), *Fixing Electoral Boundaries in India: Laws, Processes, Outcomes, and Implications for Political Representation* (Oxford University Press 2015) 115 ('Sanjay Kumar').

¹²⁵ For an overview of the fourth delimitation in India, see Sanjay Kumar (n 124) 112-125.

¹²⁶ PTI, 'Census, delimitation soon after 2024 polls, says Amit Shah' *Deccan Herald* (20 September 2023) <www.deccanherald.com/india/census-delimitation-soon-after-2024-polls-bjp-has-given-more-obc-representation-than-others-says-amit-shah-2694345> accessed 6 August 2024. Certain news sources have indicated that the process for conducting the census is expected to commence in September 2024. See, Sarita Chaganti Singh and Shivangi Acharya, 'India to begin delayed census in Sept as Modi looks to plug data gaps, sources say' *Reuters* (21 August 2024) <www.reuters.com/world/india/india-begin-delayed-census-sept-modi-looks-plug-data-gaps-sources-say-2024-08-21/> accessed 31 August 2024.

¹²⁷ Aditya Prasanna Bhattacharya, Alok Prasanna Kumar, Arghya Sengupta, Kadambari Agarwal, Lalit Panda, Manmayi Sharma and Ritwika Sharma, 'One Nation, Many Paths: A Position Paper on the Indian Constitution' (*Vidhi Centre for Legal Policy*, 2022) 7 <<https://vidhilegalpolicy.in/research/one-nation-many-paths/>> accessed 1 June 2024 ('Bhattacharya and others').

¹²⁸ Louise Tillin, *Indian Federalism* (1st edn, Oxford University Press 2019) 22 ('Tillin I').

based, and ethnic diversity.¹²⁹ The outcome was a document that provided for a strong centre, which simultaneously anticipates interdependence between the central government and the states.¹³⁰

Deliberations in the Constituent Assembly highlighted how India's Constitution offered the flexibility to be both "unitary as well as federal according to the requirements of time and circumstances".¹³¹ Indian federalism has often been characterised as allowing greater flexibility and facilitating achievement of national-level policy changes while accommodating regional interests.¹³² This flexibility is embedded in the design of the Constitution, one instance of which is considered to be the provision on formation of states at the behest of the Parliament. Article 3 of the Constitution authorises Parliament to form new states, increase or diminish the area of any state, and alter its name, by enacting a law for that purpose.¹³³ The views of the concerned state under Article 3 are sought by the President on the proposed parliamentary law, but Parliament is not obliged to either consider these views or modify the law based on what the states say. While ascertaining the views of the state legislature is necessary under the proviso to Article 3, these views have no legal effect, and Parliament is not bound by them. This stipulation under the proviso was added by the Constitution (Fifth Amendment) Act, 1955¹³⁴ prior to which the President could introduce a proposal (affecting the boundaries of a state) in Parliament only after referring it to the state legislatures concerned for their views.¹³⁵ Needless to say, the process was time-consuming, and had the potential to stall the smooth passage of the recommendations of the States' Reorganisation Commission for a radical redrawing of state boundaries and creation of new states.¹³⁶ This amendment ensured that the process of reorganisation could not be stalled by any one state.¹³⁷

In practice, however, the proviso to Article 3 has translated into a complete disregard of the views of state Legislative Assemblies in the matter of state formation.¹³⁸ A standout instance of this emerged during the creation of Telangana in 2014 by the Andhra Pradesh Reorganisation Bill, 2013 ('AP Reorganisation Bill'). The AP Reorganisation Bill, which provided for the creation of Telangana, was referred to the state Legislative Assembly for its views on 12 December 2013. Through resolutions passed by voice vote, the state Legislative Assembly rejected the AP Reorganisation Bill, with 9,072 amendments and expression of views by MLAs recorded on its clauses.¹³⁹ Despite this rejection, and true to a literal interpretation of Article 3, the AP Reorganisation Bill was passed by both houses of Parliament in February 2014.

Concerns around inadequacy of consultations with concerned State Governments are also relevant in the context of states which have an asymmetric arrangement with the centre. The Constitution of India relies on several forms of what is called "asymmetric federalism", a reference to the grant of differential rights to certain

¹²⁹ See, Ambar Kumar Ghosh, 'The Paradox of 'Centralised Federalism': An Analysis of the Challenges to India's Federal Design' (ORF Occasional Paper, 17 September 2020) <www.orfonline.org/research/the-paradox-of-centralised-federalism-an-analysis-of-the-challenges-to-india-s-federal-design> accessed 10 June 2024.

¹³⁰ Bhattacharya and others (n 127) 7-8; Tillin I (n 128) 22.

¹³¹ Dr. B. R. Ambedkar, *Constituent Assembly of India Debates*, vol. 7, para 7.48.211, 4 November 1948 (*ConstitutionofIndia.net*) <www.constitutionofindia.net/debates/04-nov-1948/> accessed 9 June 2024.

¹³² Louise Tillin, 'Federalism and Democracy in Today's India' (2018) 53(33) *Economic and Political Weekly* 49-53. See also, Alfred Stepan, 'Federalism and Democracy: Beyond the US Model' (1999) 10(4) *Journal of Democracy* 19-34.

¹³³ Constitution of India 1950, Article 3.

¹³⁴ The Constitution (Fifth Amendment) Act, 1955, section 2 <www.india.gov.in/my-government/constitution-india/amendments/constitution-india-fifth-amendment-act-1955> accessed 5 June 2024.

¹³⁵ Constitution of India 1950, Original Manuscript (n 85).

¹³⁶ Arghya Sengupta and Alok Prasanna Kumar, 'Interpreting a federal Constitution' *The Hindu* (16 November 2021) <www.thehindu.com/opinion/lead/interpreting-a-federal-constitution/article5649745.ece> accessed 13 June 2024 ('Sengupta and Prasanna Kumar').

¹³⁷ Sengupta and Prasanna Kumar (n 136).

¹³⁸ *Babulal Parate v. State of Bombay*, AIR 1960 SC 51; *Pradeep Chaudhary v. Union of India*, (2009) 12 SCC 248.

¹³⁹ 'Telangana Bill rejected in the Andhra Pradesh Assembly' *The Economic Times* (30 January 2014) <<https://economictimes.indiatimes.com/news/politics-and-nation/telangana-bill-rejected-in-the-andhra-pradesh-assembly/articleshow/29594874.cms?from=mdr>> accessed 30 May 2024.

federal units, often in recognition of their distinctive ethnic identity.¹⁴⁰ The abrogation of Article 370 (on temporary provisions with respect to the state of Jammu and Kashmir), and the bifurcation of Jammu and Kashmir into two Union territories in August 2019 severely tested the government's willingness to accommodate constitutional asymmetry.

Article 370 was abrogated through two Presidential orders,¹⁴¹ taking away the special status granted by the Constitution to Jammu and Kashmir.¹⁴² Soon after, the Jammu and Kashmir Reorganisation Act, 2019 was passed, which reorganised the state into two Union territories – Ladakh, and Jammu and Kashmir. At the time of passing of this Act, a proclamation for President's rule under Article 356 had been issued in Jammu and Kashmir. Subsequently, the constitutional validity of the presidential orders as well as the Jammu and Kashmir Reorganisation Act, 2019 was challenged before the Supreme Court. A five-judge bench unanimously upheld the abrogation of Article 370, largely validating both presidential orders which brought about the abrogation.¹⁴³

The Jammu and Kashmir Reorganisation Act, 2019, in particular, was challenged for being enacted without consultation with the state legislature, as required under Article 3.¹⁴⁴ A substantive concern was also raised around Article 3 – that it does not empower Parliament to extinguish the character of a state in its entirety.¹⁴⁵ This substantive concern was not entertained by the majority in the Supreme Court, given the Solicitor General's submission that statehood would eventually be restored to Jammu and Kashmir.¹⁴⁶

On the necessity of soliciting the state legislature's views, the Supreme Court noted that these views, as per the proviso to Article 3, are recommendatory to begin with.¹⁴⁷ Given the proclamation of President's rule in Jammu and Kashmir, the Union Government had assumed the role of the state legislature during the time of passing of the Jammu and Kashmir Reorganisation Act, 2019. The Union had sought the views of both houses of Parliament on this law, and the question to be considered was whether the Parliament could have substituted its own views for the views of the state legislature as required in the proviso to Article 3, in view of the proclamation under Article 356.¹⁴⁸ While responding to this question, the majority held that Parliament's powers under Article 356 extended beyond law-making.¹⁴⁹ As the views of the state legislature in the proviso to Article 3 are recommendatory, the majority did not see room for debating whether Parliament in exercise of powers under Article 356 could have substituted its views for that of the state legislature.¹⁵⁰ Ultimately, the need for soliciting the views of the state legislature was dispensed with.

¹⁴⁰ Louise Tillin, 'The fragility of India's federalism' *The Hindu* (8 August 2019) <www.thehindu.com/opinion/lead/the-fragility-of-indias-federalism/article28872165.ece> accessed 14 June 2024 ('Tillin II').

¹⁴¹ See, The Constitution (Application to Jammu and Kashmir) Order, 2019 ('CO 272') <<https://cdnbbsr.s3waas.gov.in/s395192c98732387165bf8e396c0f2dad2/uploads/2019/10/20191029100.pdf>> accessed 12 August 2024; and Declaration Under Article 370(3) of the Constitution ('CO 273') <www.scobserver.in/wp-content/uploads/2021/09/370_PO_CO273_proclamation.pdf> accessed 12 August 2024.

¹⁴² For a detailed discussion on Article 370 and its abrogation, see Balu G. Nair, 'Abrogation of Article 370: Can the President Act without the recommendation of the Constituent Assembly?' (2019) 3(3) *Indian Law Review* 254-279.

¹⁴³ *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647]; Chief Justice D.Y. Chandrachud, Justices B.R. Gawai and Surya Kant wrote the majority judgment. Justice S.K. Kaul and Sanjiv Khanna wrote separate and concurring judgments. [CO 272 was upheld in part, while CO 273 upheld fully].

¹⁴⁴ *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647].

¹⁴⁵ *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647].

¹⁴⁶ In light of the Solicitor General's submission, the Court did not deem it necessary to determine whether the reorganisation of the State into two Union territories was permissible under Article 3.

¹⁴⁷ *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647], para 545.

¹⁴⁸ *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647], para 542.

¹⁴⁹ *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647], para 543 – "...scope of the powers of Parliament under Article 356(1)(b) cannot be restricted to only law-making powers of the Legislature of the State. Thus, the exercise of power cannot be held mala fide merely because it is a non-law making power or that it furthers an important federal principle."

¹⁵⁰ *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647], para 545.

4. The fragility of Indian federalism

In the alteration of the special status of Jammu and Kashmir and the enactment of the Jammu and Kashmir Reorganisation Act, 2019 the flexible nature of Indian federalism was subverted to further centralisation of power.¹⁵¹ Combinedly, the Jammu and Kashmir Reorganisation Act, 2019 and the Presidential Orders created two new Union territories, abolished a state, and took away the special rights enjoyed by the state in national governance which were promised to it by the Constitution.¹⁵² All of this was done without any consultation or public discussion. Provisions such as these which concern Parliament's power to alter State boundaries or the President's power to issue a proclamation of Emergency in a state in case of failure of constitutional machinery¹⁵³ are manifestations of the centralising tilt of Indian federalism.¹⁵⁴ In a substantial sense, Article 356's wings have been clipped since the Supreme Court's decision in *S.R. Bommai v. Union of India*,¹⁵⁵ where a nine-judge bench held that the President's decision to impose Emergency can be judicially reviewed, and limited the grounds on which the Presidential proclamation could be issued.¹⁵⁶ Article 3, however, has not been similarly reinterpreted, with parliamentary supremacy having been repeatedly read into the provision.¹⁵⁷

The abrogation of Article 370 (and its subsequent validation by the Supreme Court) is a compelling instance of how the flexible nature of India's federalism can be subverted to promote centralisation through purely legalistic means.¹⁵⁸ This also highlights the overall nature of Indian federalism, which places fewer (and weaker) institutional checks on the power of a Union government enjoying a parliamentary majority.¹⁵⁹ The lack of institutional checks manifests itself in several ways, such as when the office of the Governor is misused by the Centre to hamper the functioning of democratically elected governments in opposition-ruled states,¹⁶⁰ undue centralisation in the practical working of the arrangement of legislative entries under the Seventh Schedule,¹⁶¹ and the routine use of discretionary grants (in the form of Centrally Sponsored Schemes or 'CSSs') from the Centre to the states which inhibit the latter from exercising policy priorities over subjects that are constitutionally within their legislative and executive domain.¹⁶²

Simultaneously, given the form and composition of the Rajya Sabha, states' representation in Parliament is often found to be weak. As mentioned previously, the Rajya Sabha does not provide equal representation to states, and its composition is dependent on state-specific population. Following an amendment made to the Representation of the People Act, 1951 in 2003, the requirement of domicile in the state concerned for getting elected to the Rajya Sabha was dispensed with. Upon being challenged, the constitutional validity of this amendment was upheld by the Supreme Court in *Kuldip Nayar v. Union of India*,¹⁶³ primarily on the ground that

¹⁵¹ Bhattacharya and others (n 127) 9.

¹⁵² Bhattacharya and others (n 127) 9.

¹⁵³ Constitution of India 1950, Article 356.

¹⁵⁴ For a discussion on Indian federalism, see, Mahendra Pal Singh, 'The Federal Scheme' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 451-465 ('Singh').

¹⁵⁵ (1994) 3 SCC 1.

¹⁵⁶ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

¹⁵⁷ *Babulal Parate v. State of Bombay*, AIR 1960 SC 51; *Pradeep Chaudhary v. Union of India*, (2009) 12 SCC 248; *In Re: Article 370 of the Constitution* [2023 SCC OnLine SC 1647], para 545.

¹⁵⁸ Bhattacharya and others (n 127) 9.

¹⁵⁹ *Tillin II* (n 140).

¹⁶⁰ Kaleeswaram Raj, 'Use and abuse of Governor's powers' *Frontline* (5 May 2022) <<https://frontline.thehindu.com/cover-story/use-and-abuse-of-governors-powers/article38484606.ece>> accessed 2 June 2024; Bhattacharya and others (n 127) 9-10.

¹⁶¹ Report of the Sarkaria Commission, 'Chapter II – Legislative Relations' (Inter-State Council Secretariat, Government of India 1988) <<https://interstatecouncil.gov.in/wp-content/uploads/2015/06/CHAPTERII.pdf>> accessed 6 August 2024.

¹⁶² Ritwika Sharma, Mayuri Gupta and Kevin James, 'Fiscal Federalism and Centrally Sponsored Schemes: Rethinking Article 282 of the Constitution' (*Vidhi Centre for Legal Policy*, 2021) <<https://vidhilegalpolicy.in/research/fiscal-federalism-and-centrally-sponsored-schemes-rethinking-article-282-of-the-constitution/>> accessed 5 June 2024 ('Sharma and others').

¹⁶³ (2006) 7 SCC 1.

the Rajya Sabha “acts as a revising chamber over the Lok Sabha”,¹⁶⁴ and “does not act as a champion of local interests”.¹⁶⁵ The composition of the Rajya Sabha mirrors that of the Lok Sabha, and is not necessarily related to state interests.¹⁶⁶ Resultantly, the ability of states to be heard at the centre is a product of their political empowerment and the compulsions of coalition politics, and not so much their constitutional standing.¹⁶⁷ In the absence of a Rajya Sabha which is adequately representative of states’ concerns, a Lok Sabha constituted on a purely population-proportionate basis could prejudicially impact states which sends fewer members to Parliament owing to their lower populations.

The evidently centralised tilt of Indian federalism also causes fragility in the relationship among states themselves. It is important to see the relative power of different states in the same light as the balance between the Union and the states. India being a Union of states, the “state” is the reference unit for resource allocation, power-sharing, and policy-making in the country.¹⁶⁸ The centralised nature of allocation of resources (especially fiscal resources) as well as making and implementation of policies is a source of disparity between states. Population remains a relevant consideration in making tax devolutions via the Finance Commission,¹⁶⁹ impacting the kind of moneys a state receives. Financially well-performing states that have managed to successfully control their populations have lamented not receiving fiscal allocations that are commensurate with their contributions.¹⁷⁰ Simultaneously, states which are not as well-off financially have felt short-changed as sector-specific improvements have not benefited them as well as those states that are already performing better.¹⁷¹ Allocations outside of the purview of the Finance Commission, such as those through CSSs, are determined at the national level and are meant to be uniformly applied across states. CSSs are designed and partly funded by the Union Government, and are to be implemented by State Governments (in accordance with the terms fixed by the Union).¹⁷² The quantum of central assistance to states under CSSs are determined by the Union Government and are conditional transfers. CSS have often been criticised for being framed without adequate consultation with states, and for imposing rigid conditionalities (on states) for release of funds.¹⁷³ CSSs have also been pulled up for their one-size-fits-all approach, which can disregard the felt needs and peculiarities of particular states, hamper states’ autonomy with respect to their spending priorities, and fall short in bridging inter-state disparities in key sectors.¹⁷⁴ Effectively, CSSs signify how policy-making at the national level can impact different states differently.

¹⁶⁴ (2006) 7 SCC 1, para 47.

¹⁶⁵ (2006) 7 SCC 1, para 47.

¹⁶⁶ Mittal and others (n 96) 54.

¹⁶⁷ Tillin I (n 128) 20.

¹⁶⁸ Nilakantan RS, ‘South India is rightly agitated by unfair allocation. Limiting Centre’s power is the answer’ *The Print* (12 February 2024) <<https://theprint.in/opinion/south-india-is-rightly-agitated-by-unfair-allocation-limiting-centres-power-is-the-answer/1962735/>> accessed 5 August 2024. See also, Singh (n 154) 452.

¹⁶⁹ ‘Report of the 15th Finance Commission for 2021-26’ (PRS Legislative Research, 3 February 2021) <<https://prsindia.org/policy/report-summaries/report-15th-finance-commission-2021-26>> accessed 13 August 2024. It is worth mentioning that the Finance Commission now also considers “Demographic Performance” of states while making tax devolutions, which accounts for their efforts in controlling their population. See, Fifteenth Finance Commission, ‘Finance Commission in COVID Times: Report for 2021-26’ vol I (Finance Commission, October 2020) 12 <<https://fincomindia.nic.in/asset/doc/commission-reports/XVFC%20VOL%20I%20Main%20Report.pdf>> accessed 13 August 2024.

¹⁷⁰ Livemint, ‘Why India’s States are Antsy about Money’ *Livemint* (19 February 2020) <www.livemint.com/news/india/why-india-s-states-are-antsy-about-money-11582131907759.html> accessed 13 August 2024.

¹⁷¹ Chirashree Das Gupta and Prabhat Prasad Ghosh, ‘Political Implications of Inter-state Disparity’ (2009) 44(26-27) *Economic & Political Weekly* 185-191.

¹⁷² For a comprehensive analysis of the constitutional concerns around formulation and implementation of CSS, see Sharma and others (n 162).

¹⁷³ Sharma and others (n 162) 16-18.

¹⁷⁴ Avani Kapur & Vikram Srinivas, ‘Why the Centre needs to give states more control over schemes it co-finances’ *Scroll.in* (29 March 2016) <<https://scroll.in/article/805191/why-the-centre-needs-to-give-states-more-control-over-schemes-it-co-finances>> accessed 1 August 2024. See also, Niranjana Sahoo, ‘An Examination of India’s Federal System and its Impact on Healthcare’ ORF Issue Brief Issue No. 160 (Observer Research Foundation, October 2016)

This should also be understood in light of the fact that unequal representation levels can affect the chances a state has of forming part of the national executive.¹⁷⁵ Disparity in representation is known to disproportionately penalise people from larger-than-average constituencies, by underrepresenting them in the legislature and in the executive.¹⁷⁶ A future delimitation and simultaneous apportionment of seats in Parliament could determine which states have a greater say in both law and policy-making at the national level. While some states argue for population-based apportionment of seats in the Lok Sabha, others are opposed to it because of the prospect of losing seats when a delimitation exercise is finally carried out.¹⁷⁷ A purely population-based delimitation and simultaneous apportionment (of Lok Sabha seats) could enhance the majoritarian elements of Indian federalism, and remove checks on the majority's will, especially given the evidently centralising features and tendencies of the Constitution, that have been described above. It is worth recalling that the 42nd Amendment, 1976 that first postponed delimitation had the effect of protecting the number of parliamentary seats belonging to the southern states, which was the only region of the country that the Indian National Congress performed well in during the General Elections of 1977.¹⁷⁸ It is arguable if the Indian National Congress received any sizeable electoral gains in South India as a consequence of the freeze,¹⁷⁹ but the amendment by itself came on the back of the national emergency declared in 1975 by a Congress-majority government at the centre. As is widely known, the 42nd Amendment, 1976 was aimed at cementing certain executive excesses unleashed during the emergency, especially those which curtailed powers of judicial review and suspended individual rights and personal liberties.

Federalism in India has evolved in response to the political and social developments in the country. Post-independence, after the creation of linguistic states, the growth of coalition politics and regional parties allowed for voices to be heard against centralising tendencies.¹⁸⁰ In the 1990s and 2000s, regional parties emerged as key players in consolidating national coalitions,¹⁸¹ while the 2010s have witnessed a period of renewed centralisation. The impending delimitation of electoral constituencies cannot remain divorced from the politics of any ongoing trends and existing structures.

The fragility of Indian federalism gets aggravated by the fact that political preferences of voters have traditionally seen a distinct geographic distribution that would result in certain political parties benefitting more from population-proportionate apportionment, though the recent 2024 General Elections may stand as an outlier. Political centralisation impacts states differently, especially when the Union Government is willing and able to treat them differently along party lines. A future delimitation based entirely on population-proportionality could potentially disadvantage states not just because of their lower populations, but also owing to their incumbent political leadership (and their existing relationship with the Union Government of the day). Delimitation and apportionment carried out in this fashion can variously impact states' capacity to bat for their interests within Parliament, and their role and stature in national politics. This trend of skewed representation, if left unchecked and unaddressed, could well further resentment, and fuel inter-state disputes and even greater disparity between states.

https://www.orfonline.org/wp-content/uploads/2016/10/ORF_IssueBrief_160_HealthFederalism_FinalForUpload.pdf accessed 13 August 2024.

¹⁷⁵ RR Bhavnani, 'The Effects of Malapportionment on Cabinet Inclusion: Subnational evidence from India' (2018) 48(1) *British Journal of Political Science* 69; Frances E. Lee, 'Senate Representation and Coalition Building in Distributive Politics' (2000) 94(1) *American Political Science Review* 59 ('Bhavnani').

¹⁷⁶ Bhavnani (n 175) 82, 86.

¹⁷⁷ 'Delimitation is a swinging sword aimed at South Indian states: MK Stalin' *Business Standard* (20 September 2023) <www.business-standard.com/india-news/delimitation-is-a-swinging-sword-aimed-at-south-indian-states-mk-stalin-123092000450_1.html> accessed 11 June 2024; 'Delimitation cannot be done abruptly: Ex-RBI Governor D Subbarao's two-point solution for North-South divide' *Business Today* (2 May 2024) <www.businesstoday.in/india/story/delimitation-cannot-be-done-abruptly-ex-rbi-governor-d-subbaraos-two-point-solution-to-north-south-divide-428049-2024-05-02> accessed 11 June 2024.

¹⁷⁸ Alistair McMillan, 'Delimitation, Democracy, and End of Constitutional Freeze' (2000) 35(15) *Economic and Political Weekly* 1271, 1273.

¹⁷⁹ Bhavnani (n 175) 78-79.

¹⁸⁰ Bhattacharya and others (n 127) 10.

¹⁸¹ Eswaran Sridharan, 'Coalitions and Party Strategies in India's Parliamentary Federation' (2003) 33(4) *Publius* 135.

IV. What Kind of Democracy Do We Want to Be?

The previous two sections of this report have been set out so as to first explain the general principles at play in the apportionment of seats and then describe the context within which these principles have to be applied. It is now time to attempt this application. In describing how India's crisis of representation can be addressed, we hope to provide a clear and systematic view of the choices available to our polity and the different ways in which relevant considerations can be weighed. However, at this stage in the development of the issue, we recognise that it strikes at the very core of our collective understanding of Indian democracy and national identity, that the principles at play can seem indeterminate and amorphous, and that the relative weightage given to different values can differ considerably. As a result, the aim has been to provide an enumeration of relevant alternatives.

1. Interpretative choices

To start with, it would be appropriate to consider how the issue would play out if there is no modification to the basic rules laid down in the Constitution. In this scenario, we should consider how courts will interpret rules and respond to different eventualities. The relevant constitutional provisions have been set out clearly and the scope for moulding reliefs through interpretative creativity is limited. Courts would face substantial difficulties in either requiring population-proportionate apportionment in the Lok Sabha (if it is postponed again) or in preventing it (if it is implemented).

Let us consider the first possibility. If Parliament decides to amend the Constitution a third time to postpone population-proportionate allocation of seats to states, would courts be able to interfere with this decision? If they choose to, it would be on the ground that such postponement would violate the basic structure doctrine. What basic feature of the Constitution would be violated by this postponement? The most likely candidate for this would be a facet of democracy like political equality understood as the "one person, one vote" principle.

As it happens, a question of just this nature was considered in *R.C. Poudyal v. Union of India* ("R.C. Poudyal"),¹⁸² in which the Supreme Court was examining the validity of constitutional amendments permitting reservations in the Sikkim Legislative Assembly that were disproportionate to the population levels of the relevant communities. On the face of it, the question of political reservations seems to be different from the question of voting equality because such reservations do not seem to change the value or force of anyone's vote. While the *R. C. Poudyal* judgment does not clarify this matter, the analysis offered in the second section of this report pinpoints the connection between reservation and political power. Both voting equality and equal chances in achieving representation are aspects of political equality, and reservations in legislatures are aimed at securing the latter.

The *R. C. Poudyal* judgment finds that the "one person, one vote" principle is "more a declaration of a political ideal than a mandate for enforcement with arithmetical accuracy"¹⁸³ and that "[p]erfect political equality is only ideological".¹⁸⁴ It further holds that the principle is "considerably tolerant of imbalances and departures" and provides illustrations of provisions on the legislatures of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, and the Union territories, as well as provisions on the representation of Anglo-Indians in state legislatures, to point out that "mathematical proportionality of representation is not a declared basic requirement in each and every part of the territory of India".¹⁸⁵ A concurring opinion also drew reference to the scope for deviation from population-proportionate representation in relation with Scheduled Castes and Scheduled Tribes reservations and suggested that such deviation could not go to the extent of "tilting the balance" so as to "convert a minority into majority".¹⁸⁶ While the Court did warn that the Sikkim provisions were contextual,

¹⁸² *R.C. Poudyal v. Union of India*, 1994 Supp (1) SCC 324

¹⁸³ *R.C. Poudyal*, para 108.

¹⁸⁴ *R.C. Poudyal*, para 110.

¹⁸⁵ *R.C. Poudyal*, para 126.

¹⁸⁶ *R.C. Poudyal*, para 187. While this limitation seems ill-informed regarding the manner in which political reservations alter electoral outcomes (e.g., the reservation of legislative seats can shape and determine who holds the majority in a legislature without providing a community the majority of seats), it is also only a finding in a concurring opinion.

impliedly temporary, and potentially inappropriate for other parts of the country,¹⁸⁷ they continue to be in force today, and the judgment arguably leaves much discretion in Parliament's hands.

Similarly, in *Jammu and Kashmir National Panthers Party v. Union of India*,¹⁸⁸ the Supreme Court was looking into a challenge against statutory and constitutional amendments postponing delimitation in the state of Jammu and Kashmir, including on the ground that it allowed for imbalances in representation in the state's Legislative Assembly and thus violated the basic constitutional feature of democracy. Here too, the Court found that there was neither any justiciable right to demand uniformity in the value of one's vote nor was such uniformity part of the basic structure. Even if one finds the reasoning in these judgments to be faulty, the discussion in the second section of this report provides independent reasons not to view voting equality as an intrinsic or definitive feature of either democracy or free and fair elections. Further below in this section, we explore some alternatives as to what meaningful political equality can look like in the Indian Parliament (if strict voting equality is to be rejected), and even a cursory examination of these alternatives will reveal to readers why courts would find it very difficult to choose between them on the basis of constitutional standards. Even ordering for a stop-gap arrangement pending further consideration of the issue by Parliament could involve overreach.

What of the second possibility? Would courts have the power to prevent the implementation of population-proportionate apportionment in the Lok Sabha, on the ground that it violates the Constitution in some manner? There is little in the text of the Constitution that would support this view. The principle of federalism has been built into the Constitution by declaring India as "a union of states" and through provisions on the exclusive legislative and executive powers of states, as well as areas where powers are concurrent or where cooperation is envisaged. These provisions do not obligate protective forms of representation for the states in Parliament. On the subject of the representation of states in Parliament, the Constitution is clear regarding the population-proportionate allocation of seats in the Lok Sabha and parliamentary power to modify the composition of the Rajya Sabha in the Fourth Schedule. These provisions are specific and unambiguous. While it is true that the Lok Sabha is to be apportioned in proportion to population levels only "so far as practicable", this phrase is a permissive exception to population-proportionality. It only *allows* deviation where precise proportionality is not practicable, and does not *require* it. In fact, the words used in the 42nd Amendment, 1976 and 84th Amendment, 2002 to the Constitution (inserting provisions to postpone compliance with Articles 81 and 82) imply that Parliament has understood that wide deviations are not permitted by the "so far as practicable". This being the case, it is difficult to imagine how the phrase can be treated as an obligation to deviate from proportionality.

At a stretch, it could be argued that the right to equality under Article 14 demands meaningful political equality and the obligation under this fundamental right needs to be read harmoniously with the obligation under Article 81 to allot seats to states in proportion to their population. Since this latter provision is to be complied with only to the extent that it is "practicable", one line of reasoning could be that a supposed constitutional right to protective representation of states under Article 14 makes compliance with strict voting equality as per Article 81 impracticable. Parliament would then be under a constitutional duty to ensure such protective representation when allotting seats to states. However, courts have overwhelmingly held against any constitutional duty for affirmative action except where reservations in legislative seats have been explicitly provided for in the Constitution. Even in the case of reservations in jobs and educational institutions, courts have only found that the Constitution authorises the same without requiring it. Even if some constitutional mandate for the protective representation of state interests could be located, however, courts would not be equipped to devise an appropriate remedy and, in this spirit, Article 329(a) bars judicial review of laws related to electoral matters. While the apportionment of seats to states is not explicitly mentioned as an example under this bar, it would be reasonable to believe that it is included as a relevant electoral matter.

This leaves open the question of the violation of some unwritten or implicit constitutional principle. For instance, there might be a claim that population-proportionate apportionment violates the basic feature of

¹⁸⁷ R.C. Poudyal, para 128-29.

¹⁸⁸ *Jammu and Kashmir National Panthers Party v. Union of India*, (2011) 1 SCC 228.

federalism.¹⁸⁹ One factor militating against this is that if the delimitation order implementing Lok Sabha reapportionment is challenged, there is no assurance that the basic structure doctrine would be applicable to the order. It remains a vexed question as to whether the doctrine can be used to strike down an ordinary legislation.¹⁹⁰ Even if it could, there is little reason to see how disproportionate allocation of seats to certain states can be viewed as basic to federalism. The original Constitution itself defines the extent of federal arrangements in the composition of Parliament. While, for example, the principle of judicial primacy in the appointment of judges has been held to be basic to the Constitution despite appearing to be at odds with the plain meaning of its provisions, interpretations like this tread a perilously fine line. Is the basic structure of the Constitution so discriminating that it would prevent the loss of seat shares for states with slow population growth while allowing other states to continue with lower seat shares because their populations were never high enough to start with? Why would federalism be concerned more with the powers of some states and not others?

If anything, the foregoing discussion illustrates how the Constitution's existing scheme fails to adequately account for certain compelling social and political needs, and its framers did not make provision for these developments. It may well be that we will once again have to turn to courts to make up for political failures, forcing them to twist constitutional provisions beyond recognition. After all, even if constitutional jurisprudence does not readily lend itself to solutions in this instance, we can still see how political and fiscal federalism suffers here.¹⁹¹ Nonetheless, our first priority should be to develop and implement better vertical separation of powers without damaging or straining horizontal separation of powers. This is why it is important to see the problem of apportionment in the Indian Parliament as one of constitutional design and reform. The next sub-section briefly spells out the choices that this approach would have to navigate.

2. Fair Apportionment and Constitutional Reform

Attempting to redesign constitutional provisions takes us into a different terrain than the one traversed in interpretation. While the choices involved may not be as free-standing as in case of drafting a new constitution, reform can nonetheless bring in elements of borrowing, learning, accommodation, and experimentation along with "heated political conflicts that render compromise inevitable".¹⁹² But our ability to arrive at the right compromises depends on clarity regarding both the nature of the conflict between interests and visibility over a broad set of options. In setting out these options here, we apply learnings from the previous sections to explain how implementing each would alter the nature of representative democracy in the Indian Parliament. The solutions identified are listed below, with ample scope available (in most cases) to combine them or modulate the extent of their implementation:

a. Further postponement

One alternative is the further postponement of reapportionment of seats in the Lok Sabha, just as has been done twice before.¹⁹³ As discussed in the second section of this report, certain reasons offered against population-proportionate allocation, such as population control and revenue sharing, by themselves fare poorly

¹⁸⁹ Federalism has been declared to be a basic feature in *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

¹⁹⁰ Contrast findings in *State of Karnataka v. Union of India*, (1977) 4 SCC 608 and *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1 with *Madras Bar Association v. Union of India*, (2014) 10 SCC 1 and *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

¹⁹¹ Neelanjan Sircar, 'Delimitation: South must not lose the plot' *Deccan Herald* (5 November 2023) <www.deccanherald.com/india/delimitation-south-must-not-lose-the-plot-2757189> 25 June 2024 ("In its totality, delimitation will hold significant consequences for political and fiscal centralisation in India, as well as equity in distribution across North and South India.") ('Sircar')

¹⁹² Tom Ginsburg, 'Introduction' in Tom Ginsburg (ed) *Comparative Constitutional Design* (Cambridge University Press 2012) 1.

¹⁹³ The Hindu Bureau, 'T.N. House passes resolutions against delimitation and 'One Nation, One Election' proposal' *The Hindu* (14 February 2024) <www.thehindu.com/news/national/tamil-nadu/tn-cm-stalin-moves-resolutions-against-proposed-delimitation-process-and-one-nation-one-election-policy/article67845057.ece> accessed 25 June 2024; Gopalkrishna Gandhi, 'Delimitation fallout needs no political forecasting' *The Hindu* (19 May 2022) <www.thehindu.com/opinion/lead/delimitation-fallout-needs-no-political-forecasting/article65426751.ece> accessed 25 June 2024.

when weighed against the significance of voting equality and the improved accountability of representatives in more populous states. Instead, if protecting the federal balance is to be considered a reason to continue the freeze in seat distribution, it is important to connect such a measure with the principle of federalism itself. How could we understand a further postponement as protecting federalism? Would it, for instance, strike a balance between the powers of the Union and the states or between the political heft of different states? In the third section of this report, we examined why the relationship between the Union and the states and the relationship between different states is connected. States have an interest in fair representation at the national level because they constitute the Union, have potentially different views on how national policies should be framed, can be subject to differential treatment by the Union or subject to uniform treatment that impacts them differently, and are also existentially affected by constitutional amendments that modify the federal structure. As stated above, political centralisation can potentially impact different states differently.

But would further postponement secure political federalism in a fair and forward-looking manner? To say this would be to suggest that there is something uniquely fair about the relative population levels of different states under the 1971 census. Perhaps, it can be argued that the aim is to preserve some kind of original balance of powers between the states, that 1971 marked the point when divergences in state population levels went beyond acceptable limits, and that allocations should remain frozen until the extent of those divergences reduces (i.e., when population growth rates in populous states stabilise and fall). A freeze would then serve to protect the political voice of states that would otherwise become more vulnerable than they could have envisaged. However, pursuing this reasoning would mean waiting an even longer period before reapportioning again, by which time different forms of disproportionality in population levels may have emerged.

A more serious charge, however, is that this mechanism does not consider the interests of all states fairly. Which variations in political preferences are worth protecting in this way? Which divergences in population levels should we be concerned about? As soon as we ask these questions, it becomes clear that only certain political preferences (particularly in the southern states) are being protected in extending the freeze. It remains entirely unclear why the unique and valuable preferences of voters in the North-East or in Jammu and Kashmir should remain unprotected. Similarly, there may also be valuable variations in the political preferences of voters within fast-growing states like Uttar Pradesh, Bihar, and Rajasthan that are yet to be discovered and remain suppressed within large constituencies where the “winner takes all” in elections.¹⁹⁴ What is more, the freeze in apportionment also distinctly prevents improved representation for specific groups and classes like the Scheduled Castes and Scheduled Tribes in north India, the youth, and the poor.¹⁹⁵ These are serious issues and reveal why a postponement in delimitation is unprincipled: it certainly damages political equality, but it negatively impacts federalism too. Perhaps the only reason to consider it again is if it becomes absolutely necessary because of a failure to reach any other workable solution.

b. A larger Lok Sabha

A related dimension to the question of apportionment is the total number of seats in the Lok Sabha. With an increase in this number, certain aspects of the representation problem can be addressed. One aspect relates to the responsiveness and quality of representation produced when a representative has fewer citizens to represent. One empirical study in India has linked unequal legislative representation due to malapportionment with differences in economic development.¹⁹⁶ Because constituencies are single-member, increasing the number of seats also increases the number of constituencies formed in more populous regions, thus reducing the number of persons each Lok Sabha representative has to cater to. It has been estimated that to bring representation levels in the Lok Sabha back to the original levels in 1950 (one representative for every 750,000

¹⁹⁴ Breaking up large states like Uttar Pradesh is an additional measure in this direction, but it does not capture the full implications of constituency size.

¹⁹⁵ Vaishnav & Hinson (n 2); Shruti Rajagopalan, ‘Demography, Delimitation, and Democracy’ (*Get Down and Shruti*, 3 July 2023) <<https://srajagopalan.substack.com/p/demography-delimitation-and-democracy>> accessed 25 June 2024 (‘Rajagopalan’).

¹⁹⁶ RR Bhavnani, ‘The effects of malapportionment on economic development’ 16(12) *PLoS ONE* e0259150 (2021).

persons), the total number of seats would have to be raised to 1,872.¹⁹⁷ The responsiveness benefits from such a drastic increase may, however, have to be weighed against the impact it would have on the manageability and quality of deliberation at the Lok Sabha. Then again, it may also serve to counterbalance the heavy hand of the executive in Parliament by forcing it to listen to legislators.¹⁹⁸

A second advantage to the increase of seats is that it would be more politically feasible. After all, if we were to only redistribute the existing number of seats, this would mean that the number of constituencies in less populous regions, and the seats that go with them, would have to be reduced so that they can be added into the more populous regions. Politicians who regularly contest from the less populous constituencies are likely to resist such a change because they would effectively lose their path to power i.e., the constituency they may have built their careers around. Even if this is something that every politician should be habituated to in a country that undergoes delimitation (not to mention elections themselves), the fact remains that the stasis over the past few decades may well have caused politicians and parties to become more attached to their strongholds. In the event that the Lok Sabha is expanded only to the extent that no state has to lose seats, the total number of seats needed is estimated to be 848 (as per projected 2026 figures).¹⁹⁹ This solution is an attractive one particularly because it can be implemented alongside other measures listed here. However, if implemented alongside population-proportionate apportionment, it would not resolve the threats to federalism discussed above.

c. Apportionment on the basis of number of voters

In one view of the problem, the inequality in representation that appears as a result of assessing constituency sizes according to population levels isn't as serious an issue when we consider the territories on the basis of voter figures instead.²⁰⁰ This is based on data that suggests consistently lower levels of voter registration and voter turnout in India's northern states and higher levels in the southern states. Does this mean we should amend the Constitution to apportion legislative seats on the basis of voter turnout?

This would have certain advantages and disadvantages.²⁰¹ Using voter count instead of population count can yield more accurate and unbiased figures, depending on the integrity and rigour of the census process in question, and census figures may be unavailable at the time that population levels undergo extensive changes. What is more, it may be more legitimate to determine constituency size on the basis of those who can or actually do act to hold representatives accountable in elections. Children, non-citizens, and those who do not vote should not, in this view, affect who our representatives can be. Indeed, their preferences do not impact the behaviour of representatives in office as seriously as the preferences of voters, so what purpose is served in defining constituencies on that basis?

However, elections do not serve as the only mechanism by which representatives are held accountable, and various other forms of communication, public discussion, campaigning, petitioning, and organised political action are also meant to keep legislators on their toes. Children, non-citizens, and persons who do not register or turn up to the voting booths in one election may yet become voters in subsequent ones on reaching majority, attaining citizenship, registering, or going to the polls. In this context, it may not be correct to cynically exclude them from the process of counting the number of persons that a legislator is responsible for. What is more, counting voters instead of persons may get things exactly backwards. Voter turnout and registration may be low in larger constituencies precisely because voters feel that underrepresentation makes

¹⁹⁷ Rajagopalan (n 195). See also, Alessia De Santo & Benoît Le Maux, 'On the optimal size of legislatures: An illustrated literature review' (2023) 77 *European Journal of Political Economy* 102317.

¹⁹⁸ Rajagopalan (n 195) ("It would also reduce the power of the executive, as transaction costs of coordination increase in the Lok Sabha, and the legislature is governed using more overlapping caucuses.")

¹⁹⁹ Vaishnav & Hinton (n 2).

²⁰⁰ Vaishnav & Hinton (n 2); S. Raja Sethu Durai & R. Srinivasan, 'Electoral Malapportionment in India: Options for Correction' (2024) 59(15) *Economic & Political Weekly* 49, 51-52.

²⁰¹ Bickerstaff (n 13) Chapter 5.

their votes more futile.²⁰² If this is so, retaining population as the unit of measurement can ensure better-quality representation which can in turn improve voter figures.

d. Full proportionality in the Lok Sabha

In line with constitutional provisions, the government may choose to implement full population-proportionality in the Lok Sabha. Doing so may well improve the quality of representation in states that have suffered from malapportionment, and bring with it more effective governance as well as public regard for equality as a right. However, if implemented by itself, the kind of political equality this measure would enshrine would be a rigid and formal conception along the lines of the slogan “one person, one vote”. As the discussion of this principle in the second section showed, equal voting power is only one aspect of political equality and its application can be restricted if it yields unjust outcomes, including in terms of the domination of one social group over another or serious injury to pluralist federalism. The latter is a serious threat because of the fragility of Indian federalism described in the third section. And yet, a solution like the postponement of reallocation (discussed in (a) above) fails to offer a principled alternative because, in trying to prevent biased outcomes for some states, it extends that same bias to other states and communities. As a result, it may be appropriate to consider either tempering the application of population-proportionality in terms of (e) below or combining it with other federal accommodations in this list. Full proportionality without any accommodation should be attempted only if we find good reasons to make India even more unitary.

e. Degressive proportionality in the Lok Sabha

A crucial feature of the apportionment problem in the Indian Parliament is that while population-proportionality accounts for the equality of voting power provided to individual voters, it takes little account of the effects of such allocation when population levels and political preferences diverge along regional lines. It also takes little account of how drastic the changes can be when the extent of divergence goes beyond certain thresholds. While constitutional norms may serve as the ground rules for an agreement between the members of different communities, drastic changes in an underlying premise may call for a modification of the norms. Here, the drastic change is in the balance of powers between the states in Parliament.

If the mere fact of populations diverging isn't itself a problem, but considerable divergences are instead the issue, we may favour a system of apportionment that allows for population-proportionality but only up to a point or only within a certain range. Under a system of “degressive proportionality”, seats are neither allocated equally, nor in proportion to population, but with smaller states receiving more weight than they would under population-proportionate allocation. Effectively, “[t]he more populous States agree to be under-represented in order to allow the less populous States to be represented better”.²⁰³

Some comparative examples can illustrate how this can be done. Canada amended its Constitution in 2011, with the express intent of ensuring that “the principle of proportionate representation of the provinces must balance the fair and equitable representation of faster-growing provinces and the effective representation of smaller and slower-growing provinces”.²⁰⁴ Within the reformed scheme, an ideal constituency size for the Canadian House of Commons is first determined, and if allocating seats to a province according to that constituency size results in a province having fewer seats than it does in the Senate or than it did in a particular previous apportionment, the shortfall is compensated with additional seats, while the shares of other provinces

²⁰² Rajagopalan (n 195) (“[U]nderrepresentation or loss of franchise is experienced by all the voters in a given state, and they respond accordingly. Voter turnouts are lower in larger constituencies.”).

²⁰³ Geoffrey Grimmett, Friedrich Pukelsheim, Victoriano Ramírez González, Wojciech Słomczyński and Karol Życzkowski, ‘The Composition of the European Parliament’, In-Depth Analysis for the AFCO Committee, *Directorate General for Internal Policies of the Union* (February 2017) 9 <[www.europarl.europa.eu/RegData/etudes/IDAN/2017/583117/IPOL_IDA\(2017\)583117_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/583117/IPOL_IDA(2017)583117_EN.pdf)> accessed 25 June 2024.

²⁰⁴ Fair Representation Act, 2011 (Canada), Preamble, Paragraph 2.

are then adjusted to make them population-proportionate again.²⁰⁵ This ensures a minimum level of representation for smaller provinces while allowing others representation as per their population. Similar guarantees of a minimum number of seats may be found in Germany, France, Mexico, Brazil, and Japan. India too already has a minimal version of this because all states are guaranteed at least one seat in the Lok Sabha regardless of population size. The United Kingdom, on the other hand, provides a fixed number of members in its House of Commons for England, Northern Ireland, and Wales as per a political compromise.²⁰⁶

Arguably, while such guarantees of a minimum number of seats (higher than the current minimum of one) may benefit Indian states that have so far seen especially small shares of representation in Parliament, it may not address the concerns of other states regarding excessive divergence in levels of representation over time. The Canadian example would, with modifications, work in the same direction as the solution described in (b) above. While in the context of a supranational union, the allocation of seats in the European Parliament to member states of the European Union is an instructive case. The Treaty on European Union fixes the maximum number of seats that a state can have at 96 and the minimum at 6.²⁰⁷ Within these outer bounds, a sum total of 750 seats are formally required to be allocated by a system of degressive proportionality²⁰⁸ that is in actual terms concretised through “pragmatic” negotiations (though formulae for consistent allocation have been proposed).²⁰⁹ If some variation on these systems of allocation is chosen, it could serve to temper the drastic implications of population-proportionate reapportionment in the Lok Sabha. In particular, it would recognise that even the “House of the People” can accommodate a conception of political equality that aligns with federalism. Implementing this measure would, of course, require constitutional amendments.

f. Degressive proportionality or equalisation in the Rajya Sabha

Arguably, however, the Rajya Sabha may be a more appropriate forum for the protection of state interests within the federal scheme. After all, the Rajya Sabha is “the Council of States” and its members are referred to as “representatives of the States” in Article 80 of the Constitution. The Rajya Sabha is envisaged to act in this capacity in authorising Parliament to make laws on matters in the State List (Article 249) and in the creation of the All-India Services (Article 312). What is more, as discussed in the third section of this report, the original formula for the allocation of seats within the Rajya Sabha already implemented a form of degressive proportionality that favoured smaller states over bigger ones. This formula granted states a seat each for every million persons in the population until the first five million and then one additional seat for every additional two million. The scheme ensures that the seats-to-population ratio decreases with the size of the state, thus advantaging smaller states slightly as compared to a scheme of full population-proportionality.

However, neither has the scheme of allocation been rationalised according to this formula over time (as new states have been formed or added into the Union), nor does it adequately advantage smaller states so as to ensure that they have a more even-handed share of power in the Rajya Sabha. The ten most populous states have 156 out of the 233 elected seats while the nine least populous states have only one seat each. So as to allow for such an improved allocation, the Fourth Schedule of the Constitution can be amended to reassign seat shares in the Rajya Sabha according to a different formula. For instance, the extent of degression can be increased to provide smaller states with a greater advantage, including by setting a minimum and maximum number of seats (similar to the European Parliament allocation discussed above but with a smaller distance between the minimum and maximum) and allocating the seats using a measure of population that is weighted in favour of the smaller states.²¹⁰ The aim of this would be to ensure that the smallest state isn't just left with a

²⁰⁵ The Constitution Act, 1867 (Canada), sections 51 & 51A.

²⁰⁶ Bickerstaff (n 13) Chapter 8.4.

²⁰⁷ The Treaty on European Union, Article 14.

²⁰⁸ The Treaty on European Union, Article 14.

²⁰⁹ Edwin Cartledge, ‘There's a fairer way to allot seats in the European Parliament, mathematicians say—but politicians don't like it’ (Science, 8 March 2018) <www.science.org/content/article/there-s-fairer-way-allot-seats-european-parliament-mathematicians-say-politicians-don-t> accessed 25 June 2024.

²¹⁰ McMillan (n 1) 1173.

tiny fraction of the power of the largest. Illustratively, if the minimum is set at five seats and the maximum at twenty, four of the states with the smallest size would still have the same heft as one of the largest states.

The extent of degression would be a matter of degree and would need to be formulated on the basis of both mathematical fit with the maximum number of seats (which may itself have to be increased) and political compromise. Following this line of logic further, the allocation of seats can also be modified to reflect full equality between the states of India in the Rajya Sabha, such that each state has exactly the same number of seats. This is the scheme that has remained in place for the United States Senate and served that nation over decades despite the enormous malapportionment it now represents. A number of commissions, commentators, and scholars have already suggested this solution as an appropriate step to be taken to compensate states for the loss of power they will experience as a result of the drastic divergence of population levels over time.²¹¹ This measure would result in a radical change in the nature of Indian federalism by putting the various states at par with each other in a high institution of national governance. It would also be more principled in offering power to all small states instead of just those that would lose power due to population divergences. A concurrent step that would also have to be taken is to reintroduce the territorial link between representatives of states in the Rajya Sabha²¹² or, if this is found to be ineffective, to have direct elections to the Rajya Sabha.²¹³ If equalising representation would place voters in populous states in disadvantage because it ignores the valuable variations in political preferences within the state, an additional concurrent step would be quite promising: dividing these large states so that they each gain separate and adequate representation in the Rajya Sabha.

When choosing between degressive proportionality and equalisation of state representation in the Rajya Sabha, it may be appropriate to lean in favour of the former. Despite the fact that the United States Senate has endured without widespread complaints of either disenfranchisement of or discrimination against larger states, it is still considered to be undemocratic because it can neither be defended on the ground of special considerations for the citizens of small states or on the ground of protections for state autonomy.²¹⁴ This criticism may still extend into the Indian context even if states display more valuable forms of social and political diversity in India than they do in the United States. Whichever form of protective representation in the Rajya Sabha is chosen, it should be treated as an alternative to implementing the measure proposed in (e) above, and may need to be treated as a precondition to the implementation of the measure proposed in (d).

g. Balanced fiscal powers

As mentioned in section two above (in relation with bitterness over revenue-sharing), there is also a significant problem at play in the form of the context of fiscal relations between the Union and states as well as in the relative economic conditions of different states. A facet of this problem has been described as the “3-3-3 puzzle”: “The three richest states are three times as rich as the three poorest states.”²¹⁵ This problem of economic divergence can be viewed as being inextricably linked to the problem of political equality in Parliament because of the manner in which population markers coincide to some extent with economic markers: “Poorer Indians are trapped in regions that have higher malapportionment, and therefore, are

²¹¹ Report of the Commission on Centre-State Relations, *Volume II – Constitutional Governance and the Management of Centre-State Relations* (Inter-State Council Secretariat, Government of India, 2010), Chapter 7 <<https://interstatecouncil.gov.in/wp-content/uploads/2015/06/volume2.pdf>> accessed 6 August 2024 (‘M.M. Punchhi Commission Report’); Vaishnav & Hinton (n 2); Nitin Pai, ‘A Rajya Sabha rebalance must go with Lok Sabha expansion’ *Mint* (22 May 2022) <<https://www.livemint.com/opinion/columns/a-rajya-sabha-rebalance-must-go-with-lok-sabha-expansion-11653236445049.html>> accessed 25 June 2024; Pranay Kotasthane, ‘#215 Of Openings and Possibilities’ (*Anticipating the Unintended*, 18 June 2023) <<https://publicpolicy.substack.com/p/215-of-openings-and-possibilities>> accessed 25 June 2024 (‘Kotasthane’); Rajagopalan (n 195).

²¹² M.M. Punchhi Commission Report (n 211) 160-167.

²¹³ Vaishnav & Hinton (n 2).

²¹⁴ James Lindley Wilson, *Democratic Equality* (Princeton University Press 2019) Chapter 7.

²¹⁵ Vivek Dehejia, ‘The ‘3-3-3’ puzzle and what to do about it’ *Mint* (10 September 2017) <<https://www.livemint.com/Opinion/ctuQdKDHgQNqGAbo6yJFYn/The-333-puzzle-and-what-to-do-about-it.html>> accessed 26 June 2024.

underrepresented in Parliament.”²¹⁶ This would mean that along with trying to perfect India’s political union, it is necessary to improve its economic union as well.

Three different sets of measures have been suggested in this relation: *First*, to reframe conflicts related to the horizontal distribution of fiscal resources between states in terms of the vertical distribution of resources between the Union and the states. The proposal here is to increase the overall proportion of resources devolved to states to 60 per cent because “states collectively account for 60 per cent of government expenditure.”²¹⁷ This is based on the understanding that all of the states would benefit from having more resources and this should be at the cost of the Union government (instead of one set of states benefitting at the cost of another). *Second*, institutions like the Rajya Sabha can be reformed to provide it power over fiscal matters, such as through a requirement of approval of Money Bills. A further innovative option offered by a scholar is that the share of seats in the Rajya Sabha should be determined on the basis of a state’s own revenue-raising capacity so as to align political incentives with economic growth.²¹⁸ However, as discussed in a similar context in section two above, it is worth considering that this may aggravate governance problems in poorer states and would inappropriately punish persons in such states for socio-economic conditions that they cannot be held individually responsible for. *Third*, it has been suggested that if we want discretionary spendings and fiscal transfers to be subject to a degree of state-level control, and reforming the Rajya Sabha is not feasible, institutions with state representation (similar to the GST Council) should be put in place for that purpose instead.²¹⁹

²¹⁶ Rajagopalan (n 195).

²¹⁷ Kotasthane (n 211).

²¹⁸ Rajagopalan (n 195).

²¹⁹ Sircar (n 191).

V. Conclusion: A Nation's New Incarnation?

In the course of the discussions in this report, we have traversed a series of subjects that have sometimes been neglected in the discussion on delimitation in India. It is appropriate to lay out some of these points here.

To start with, the treatment of fair democratic representation and malapportionment in legal and political science scholarship around the world has advanced far enough that engagement with the subject in India has fallen behind to a considerable degree. This is not least because of the fact that delimitation has been left on the back burner for too long. Steady and wide discussion on the subject would have ensured that global advances in thought would have filtered through to India, and it is necessary now to expeditiously make up for lost time. Whether in relation with empirical techniques to study malapportionment, or in relation with conceptual and normative developments in the ideas of constituency design, representation, and political equality, India needs further study of the subject as well as wider consensus on our constitutional compact.

This is most glaring in the conception of political equality forwarded in discussions related to the Lok Sabha. Uncritically equating it with voting equality is not tenable in any sufficiently large and diverse population, and we have tried to elaborate on why this is so in the second section. Equally, discussion on the concept of representation also needs further development. While it is also a matter of considerable urgency that we should improve the quality of accountability that representatives are subject to in electoral constituencies, the apportionment crisis requires us to expand our conceptual horizons by also considering how states are represented in Parliament. This requires close attention to both the similarities and differences that exist between the processes of drawing constituency boundaries and allocating seats to states. Finally, it is essential that we come to grips with the critical role that federalism plays in the question of apportionment, and we have attempted to explain this in the third section. Until this aspect is better appreciated, discussion on the subject will likely continue to revolve around population control, revenue sharing, or the indefinite extension of the freeze on apportionment, all of which appear to us to be unproductive approaches to follow if they are pursued without a broader plan.

We have attempted to be exhaustive in our enumeration of alternative solutions in the fourth section, but this does not preclude the possibility that yet another innovative mechanism awaits discovery. However, efforts to find such an alternative have so far seemed to be singularly dissatisfactory when the magnitude of the problem is considered. The current constitutional moment offers an opportunity for the nation to consider whether its current system of democratic governance is satisfactory or whether a broader restructuring is necessary.

Readers will note, however, that we have not weighed in heavily in favour of any particular solution or combination of solutions, apart from suggesting that a judicial resolution is unattractive. This reticence has been a conscious choice. Our study of the apportionment crisis has taught us to respect the uncertainty the nation is experiencing regarding the right institutional choices, even if it risks further inertia. Scholarship on democratic theory places great emphasis on the value of deliberation, a value that has been notably absent when previous apportionment decisions were taken. In this spirit, it is important to consider how good deliberation can often be encouraged better through the conscientious and constructive laying out of choices rather than the provocative expression of conclusions.

Our aim in this report has been to live up to this understanding of democracy.

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