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## RESEARCH SERIES

Redrawing the Electoral Boundaries:  
Debunking the Doxas of Delimitation



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Aditi, Vikrant Singh, Aman Ashesh (2020).

**“Redrawing the Electoral Boundaries: Debunking the Doxas of Delimitation”**

**Samanvaya Research Series, Vol. 1.**

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Editors: Smt Omita Paul, Dr T. K. Viswanathan

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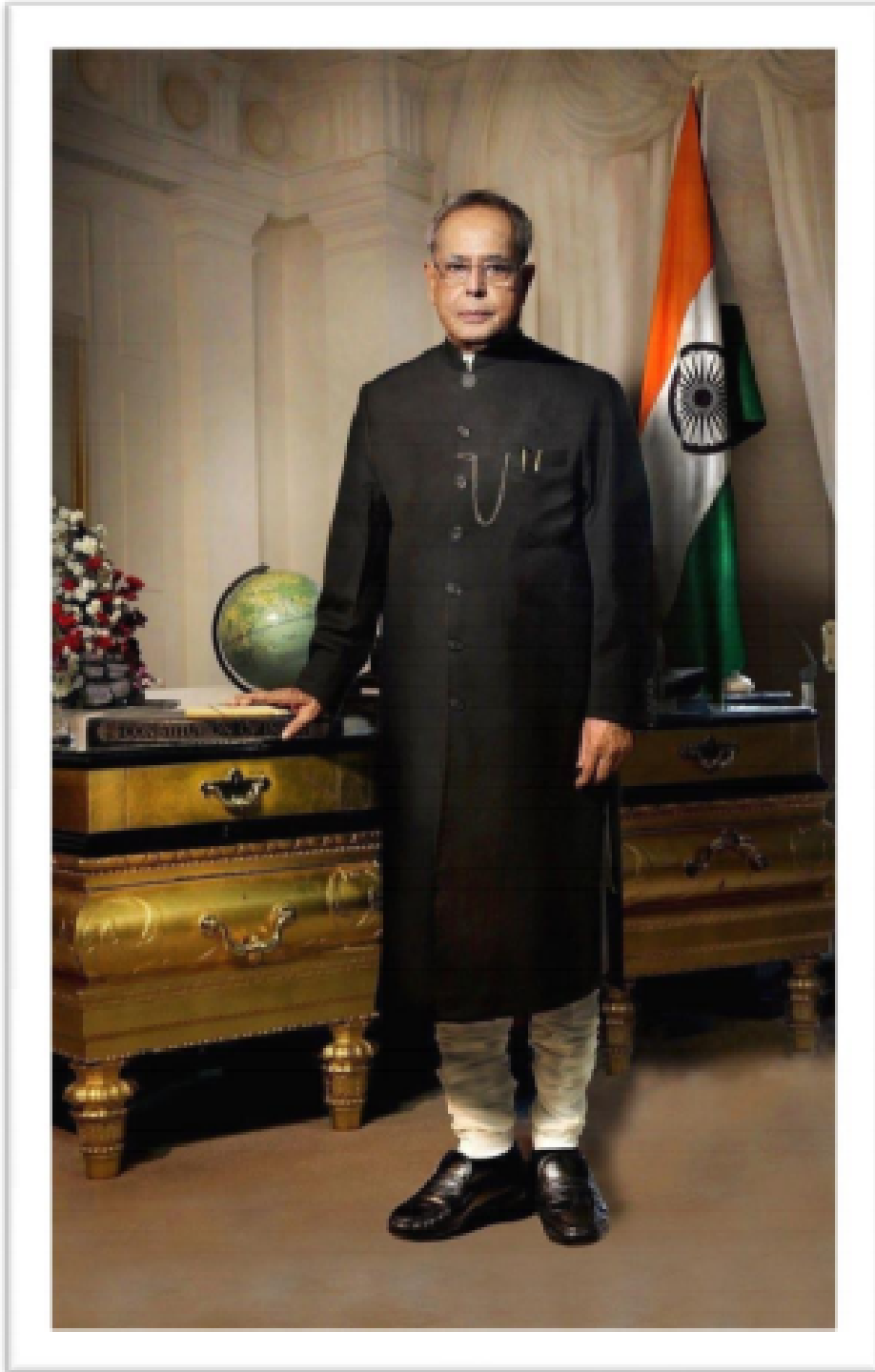
Note: By the time this publication was sent for publishing, our founder, the Hon’ble Former President of India Shri Pranab Mukherjee was no more with us. He breathed his last on 31st August 2020.

**About the Samanvaya Research Series**

The Samanvaya Research series aims at reflecting the range of work done across the Pranab Mukherjee Foundation (PMF), including PMF Research and Consultancy department, and disseminating this work to a broader audience and realising its inherent legacy towards policy and governance. Experts, scholars and professors from PMF and its associated academic institutions may contribute to this series. The findings, interpretations and conclusions expressed in these papers are entirely those of the authors and do not necessarily represent the views of the Foundation.

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Dedicated to Former President of India and our Founder



Shri Pranab Mukherjee  
(11 December 1935 - 31 August 2020)

## Editorial

The PMF Samanvaya is an independent national policy think tank promoted by the Pranab Mukherjee Foundation (PMF). Samanvaya Research Series carries out research and policy development on contemporary challenges facing India through dialogue & deliberation and its proceedings being published in the form of a Research Paper.

PMF currently undertakes research studies on the following six themes of constitutional governance & climate change including:

- I. Amendments in the Constitutional and Democratic Institutions
- II. Chief Information Commission
- III. Critical Thinking in Higher Education
- IV. Delimitation of Indian Constituencies
- V. Women's Reservation Bill
- VI. Climate Change & Green Economy

Under the research theme of constitutional reforms, among other issues, we look at the contemporary status of governance, particularly the Delimitation in Constituencies of India & role of the election commission. Delimitation is an important exercise in nation building and supports the democratic process of choosing the public representatives, the idea of low representation of candidates at various constituencies often does contribute to the non development of that area and hence we have to look at limitations and possibilities for reform.

While the Research Series will also bring out policy and systemic issues, we will also publish case studies of innovative good practices introduced at the Foundation, which have made an impact at scale on a sustainable basis and will carry lessons for the wider system improvement.

This topic of **Delimitation** was very close to *Former President of India*, and founder of the PMF, *Late Shri Pranab Mukherjee*. He often spoke about the reforms required in this exercise in most of his public addresses at various platforms. This issue was planned while he was in good health this year and he was looking forward to reading the first issue. We will dedicate each issue of this publication to Late Shri Pranab Mukherjee's exceptional political life as a true constitutionalist.

I would like to congratulate Dr T.K. Viswanathan, Former Secretary General of the 15th Lok Sabha and currently Director & Senior Adviser at PMF and his research team to bring out the first issue of this series on the Topic - ***'Redrawing the Electoral Boundaries: Debunking the Doxas of Delimitation'***. This research was thoroughly conducted over the course of one year after the general elections of 2019 were completed last year in India. The research involved detailed reading & multiple interviews with relevant stakeholders.

We hope these Samanvaya Research Series papers are found useful by students, scholars, policy makers, government administrators, as well as NGOs involved in the field. We look forward to your feedback.

**Mrs. Omita Paul**  
**Managing Editor & Director, Pranab Mukherjee Foundation**

## Foreword

It is my great privilege and honour to have been associated with Shri Pranab Mukherjee over a period of three decades when he was rendering exemplary service to India through his role as a Union Cabinet Minister, celebrated Parliamentarian, Deputy Chairman of Planning Commission of India, teacher, author, journalist and as President. It was his ardent desire that his mission should be carried forward to benefit the future generations through the creation of a Not for profit Foundation.

To fulfill his desire the Pranab Mukherjee Foundation was established in 2017. It seeks to provide a platform to promote dialogue among government, academia, policymakers, civil society and other national and international stakeholders; encourage inquiry on policy and advocacy, and evaluates the links between established legal frameworks and governance in practice; initiate campaigns for policy and institutional changes; and creates networks of engaged scholars and citizens.

One of the research topics on constitution which in which Shri Pranab Mukherjee was interested is to address the challenges which are likely to arise in undertaking delimitation exercise which is due under the constitution after the lifting of the freezing of the Constitution (Forty-Second Amendment) Act 1976. Readers may recall that Delimitation of constituencies for elections to Lok Sabha and State Legislative Assemblies was put on freeze till the first Census figures are available after the year 2026. The population according to the last census preceding the freeze was 50 crores, which in 50 years has grown to 130 crores. This has caused a massive asymmetry in the political representation in the country.

This paper tries to analyze the philosophy, legal provisions and the politico-historical narratives that revolve around the freeze on Delimitation. It introduces the problems of the moratorium on the Delimitation exercise and refutes the already existing reasoning around it in an attempt to create a larger and informed debate around the subject. The paper also argues for strengthening the federal balance by enhancing the role of the Upper House of the parliament and also makes an attempt, advocating the reforms to the existing electoral system.

As such, the first step forward here would be to ensure that the legislators engage with the issue through a comprehensive dialogue, while considering the cause and effect of each of the variables involved. Articles 81 and 170 of the Constitution of India, which mandate that a legislator has to represent the same no of voters as far as practicable throughout the country, will be instructive for this discussion.

As the deadline of the freeze is approaching fast, engaging with this issue to reform the mechanics of the democratic structures becomes all the more vital. Various stakeholders and institutions within which the political processes are embedded, could initiate this dialogue. The paper moots the idea of a second a State Reorganization Act to give effect to the Delimitation Commission Recommendations by splitting states into smaller ones which will have uniformity in voter representation in Lok Sabha and state legislatures conforming to the mandate of Articles 81 and 170.

**Dr. T.K. Viswanathan**  
**Director, Pranab Mukherjee Foundation**

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# Redrawing the Electoral Boundaries: Debunking the Doxas of Delimitation

*Aditi, Vikrant Singh, Aman Ashesh\**

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The notion of democracy can be regarded as an art, as well as a craft. It is an art when it captures the subjective and abstract notion of representation, citizenship, empowerment, and emancipation of the masses. Its craft dimension of techniques and mechanics is more implicit in the specifics of electoral processes, and the models and techniques employed often dictate the nature of democracy that is eventually formulated.

The present study focuses on such ‘technical’ requirements of delimitation of constituencies, and traces the impact that its abbrestitutions may have on the concept of equal representation of votes. It focuses on contextualising the long freeze on delimitation of state constituencies in India imposed by the 42nd Amendment, and then again by the 91st Amendment to the Constitution of India. It strives to capture the narrative of delimitation exercise in India in the context of partisan politics and legal developments in this respect, and debunks the casual justification provided for the freeze since 1971, which extends until 2031 for now. It critically analyses the freeze on delimitation and political and legal responses generated by it, and suggests a comprehensive engagement with the questions the issue generates, to reform the irregularities of representation that the delimitation freeze has caused and intensified so far.

## 1. Introduction

The importance of representation in a democracy does not need to be elucidated through an invocation of constitutional provisions. Political representation figures in the core operative principles of a Democratic Nation. The very first step towards establishing a system of representative democracy has been to allocate the voting population into spatial units, called

‘electoral constituencies’ or ‘districts’.<sup>1</sup> The process through which these electoral constituencies or districts are drawn, and redrawn, keeping careful considerations of the population, composition of the population, geographical size, and many other factors, is called delimitation.

In India, Lok Sabha or the House of People houses 545 elected representatives from 29 states and 9 Union Territories that represent a population of more than 130 crores. The Constitution of India provides for the periodical exercise of delimitation under Articles 81 and 82 after every census. The purpose of the delimitation exercise is to ensure that with a change in the population, the constituencies are also reapportioned to accommodate roughly the same population in all the constituencies, thereby upholding the principle of “One Vote, One Value”.

Delimitation of constituencies for elections to Lok Sabha and State Legislative Assemblies was put on freeze till the 2001 Census figures through the 42nd Amendment to the constitution in the year 1976, and again in the year 2002 through 84th Amendment extending the freeze till the first Census after the year 2026. The population according to the last census preceding the freeze was 50 crores, which in 50 years has grown to 130 crores. This has caused a massive asymmetry in the political representation in the country.

The paper tries to analyze the philosophy, legal provisions and the politico-historical narratives that revolve around the freeze on Delimitation. It introduces the problems of the moratorium on the Delimitation exercise and refutes the already existing reasoning around it in an attempt to create a larger and informed debate around the subject. The paper also argues for strengthening the federal balance by enhancing the role of the Upper House of the parliament and also makes an attempt, advocating the reforms to the existing electoral system.

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<sup>1</sup>†Assistant Professor, Jindal Global Law School

\* Vikrant Singh and Aman Ashesh are Research Scholars with Pranab Mukherjee Foundation.

\*\* The authors extend their most sincere gratitude to Dr. T.K. Viswanathan, Former Secretary-General to Lok Sabha and Director, Pranab Mukherjee Foundation for providing his expert advice and counsel in the structuring of this paper and providing thereof a coherent narrative.

Md. Sanjeer Alam and KC Sivaramakrishnan, ‘Fixing Electoral Boundaries in India’, Oxford University Press, (2015), pp. 1



## 2. Review of Literature

With the decline of colonialism in the middle of the twentieth century, most of the newly formed nations which were former colonies of Britain adopted the Westminster system of government, and India was not an exception. The Constitution of India provides for a Union parliament with a bicameral legislature similar to the Westminster model. The Union Parliament as mentioned in Chapter II of the constitution is composed of the President, the lower house i.e. the Lok Sabha and the upper house i.e. the Rajya Sabha.<sup>2</sup> Similarly, as per Chapter III under Article 168, the State legislature is composed of the Governor, the legislative assembly as a lower house and the upper house known as the legislative council.<sup>3</sup> The members of the House of the People of the Parliament and the State legislatures are directly elected by the people through direct elections whereas, for the Rajya Sabha and the Legislative councils, the members are elected indirectly. The Indian Constitution is one of the first to provide for universal adult suffrage, which means every adult citizen above the age of eighteen years can cast her vote in the general as well as assembly elections.<sup>4</sup> The members in Lok Sabha, as well as the State Legislative Assemblies, are elected through ‘first past the post’ system also known as plurality system as provided in the Conduct of Election Rules, 1961.<sup>5</sup> Under this system, any candidate securing the highest number of votes in her favor is considered the winner, unlike the Proportional Representation (PR) system. The exercise of overall superintendence, directions and control of elections in the country lies with the Election Commission of India which is a constitutional body.<sup>6</sup>

Indian electoral system is based on territorial representation where the entire country is divided into parliamentary and assembly constituencies on where the elections are contested. The task of ‘Delimitation’ i.e. demarcation of boundaries of territorial constituencies and their apportionment

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<sup>2</sup> Article 79 says that, ‘There shall be a Parliament for the Union which shall consist of the President and the two Houses to be known respectively as the Council of States and the House of the People’.

<sup>3</sup> Legislative councils are in the State of Andhra Pradesh, Bihar, Maharashtra, Karnataka, Tamil Nadu, Telangana and in Uttar Pradesh.

<sup>4</sup> The Constitution of India, Art 326

<sup>5</sup> The Conduct of Election Rules, 1961, Rule 64(a).

<sup>6</sup> The Constitution of India, Article 324

in the Lok Sabha and the State Legislative Assemblies is given to a separate boundary commission called the Delimitation Commission.

## 2.1 The Philosophy behind Delimitation

In simple terms, 'delimitation is the drawing or redrawing of the electoral boundaries of the constituencies with a view to dividing, so far as practicable, the population of a political division\* (State, Province or District) in such an equitable manner that there are as many electoral constituencies of equal size and population as the number of elected representatives allotted to that political division'.<sup>7</sup> The basic premise around the process of delimitation is that the ratio of the number of seats allocated in the Lok Sabha for every state to the total population of the state should nearly remain constant across the country. The same is the case for assembly constituencies in the States. The reason behind it, as rightly stated by McMillan is that 'people voting in one place do not have a greater influence over the result than people voting in another'.<sup>8</sup> In other words, the principle of 'one person, one value, one vote' must remain intact.

The US Supreme Court, in *Reynolds v. Sims*, while observing in the context of 'Equal Protection', very pertinently held that 'The Equal Protection Clause<sup>9</sup> requires substantially equal legislative representation for all citizens in a State regardless of where they reside'.<sup>10</sup> In the Indian context, it can be understood by taking the example of smaller states with lesser populations like Sikkim or Kerala and larger more populous states like Uttar Pradesh or Maharashtra. Ideally, the value of a vote of an elector in Sikkim or Kerala must be the same as that of an elector of Uttar Pradesh or Maharashtra.

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<sup>7</sup> Verma, A.K. "Issues and Problems in India's Delimitation Exercise." The Indian Journal of Political Science (Indian Political Science Association) 63, no. 4 (December 2002): 371-388.

\*It may be considered an administrative division.

<sup>8</sup> McMillan, Alistair, "Delimitation, Democracy, and End of Constitutional Freeze", Economic and Political Weekly, Vol. 35, No. 15 (Apr 2000), pp. 1271

<sup>9</sup> The Equal Protection Clause was first devised in *Baker*, 369 U.S. at 237. The claims asserting under this clause are related to quantitative vote dilution which occurs when votes receive unequal weight, and thus the power of some votes is numerically diluted.

<sup>10</sup> *Reynolds v. Sims*, 377 U.S. 533 (1964)

Some general principles, recognized<sup>11</sup> as being implicit in the guidelines framed by Delimitation Commission after every delimitation exercise for demarcation of electoral boundaries are-

1. **‘Integrity Principle-** All assembly constituencies fall wholly within a district, and no assembly constituency shall extend to more than one parliamentary constituency.
2. **Contiguity principle-** The electoral constituencies must be geographically compact and contiguous.
3. **Geometric shape-** The delimitation of the constituencies in a district shall be done starting from north to northwest, and then proceeding in a zigzag manner to end at the southern side.
4. **Equi-population principle-** The electoral constituencies must be equal in population. However, given the ‘impossibility’ and ‘impracticability’ of having equal population across constituencies, a deviation (also called ‘tolerance’) of  $\pm 10$  percent from the average population of a constituency may be allowed'.

## **2.2 The Evolution of the Process of Delimitation**

**2.2.1 Initial Phase (1951-1961).** The Constitution put the onus on the parliament to form an authority for the purpose of readjustment of territorial constituencies in the House of the People and in the legislative assembly of each State.<sup>12</sup> Article 81 talks about the apportionment of seats in the House of the People from every state along with the manner in which such apportionment should be taken place. Similarly, Article 170 provides for the manner in which the apportionment of seats in the Legislative Assembly of the state should be done. As discussed above, the Constitution also provides for the reservation of seats in the legislature for Scheduled castes and Scheduled tribes under Article 330 and 332. To provide political representation to the

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<sup>11</sup> Suvrajyoti Gupta, ‘Drawing Electoral Boundaries in India- Institutions and Laws’, Fixing Electoral Boundaries in India, Oxford University Press (2015), pp. 53

<sup>12</sup> The Constitution of India. Art 81 and 170

Anglo-Indian community in the legislature, not more than two seats are reserved for them in the Lok Sabha<sup>13</sup> and one seat in each State assembly.<sup>14</sup>

However, the Constitution was silent on who would undertake the initial division for the elections held for a period of three years from the commencement of the Constitution. The task was entrusted to the Election Commission of India by enacting sub-section 6 and 9 of Representation of the People Act, 1950. The presidential order in this regard was issued on an ad-hoc basis which was valid until the completion of the general election (1951-52) and the subsequent by-elections.

After the completion of the initial delimitation exercise, the EC made recommendations to the government to set up an independent quasi-judicial commission with judicial members, as the former encountered certain procedural shortcomings while undergoing the exercise. Based on its recommendations, the government enacted the Delimitation Commission Act, 1952 with a 3-member Commission, two judicial members and the Chief Election Commissioner as a third ex-officio member. In addition to it, two to seven political representatives from each state depending on the population of the State concerned were included as Associate Members in the Commission with no voting rights. The Delimitation Commission was also entrusted with the task of reservation of seats for SCs and STs- one seat either for SCs or STs in two-member constituencies prevalent at that time. Later, the commission recommended doing away with the two-member constituencies which were later abolished in the second delimitation exercise of 1962.

On 1st November 1956, 14 states and 6 union territories were created by the State Reorganization Act of 1956. With this reorganization, a need for a fresh delimitation commission had also arisen. However, government reappointed the same members for the new commission and the order<sup>15</sup> based on the Commission's report formed the basis for the second and third general elections to the Lok Sabha in the year 1957 and 1962, respectively.<sup>16</sup>

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<sup>13</sup> Ibid. Art. 331

<sup>14</sup> Ibid. Art 333

<sup>15</sup> The Delimitation of Parliamentary and Assembly Constituencies Order, 1956

<sup>16</sup> SK Mendiratta, 'How India Votes- Election Laws, Practice and Procedure', LexisNexis (2017), pp. 251



**2.2.2 Second Phase (1961-1971).** The second Delimitation Commission was constituted after the 1961 Census by the Delimitation Commission Act of 1962. By July 1966, the Commission had completed the assigned task, however, with the reorganization of Punjab, Himachal Pradesh and Haryana and the creation of Chandigarh as a Union Territory, some additional readjustment in the territorial constituencies were further made. The Act of 1962 had certain differences from the previous Act. First, the two-member constituencies were abolished and reservation for SC-STs was to be provided in single-member constituencies. Second, it was provided that every assembly constituency should be fallen within one parliamentary constituency. The third was with respect to the reservation of constituencies where, the constituencies reserve for Scheduled Castes should be distributed in different parts of the state, as far as practicable, in areas of higher Scheduled Caste population. However, the ST constituencies should be reserved only in those areas where there is a high concentration of the ST population. Based on the orders of this Commission, the general elections of 1967 and 1971 were conducted.<sup>17</sup>

**2.2.3 Delimitation after the 1971 Census and the Freeze.** With the completion of the 1971 Census, the third Delimitation Commission was Constituted by the Delimitation Commission Act of 1972. This Act mandated the Commission to make recommendations to readjust and reapportion the parliamentary constituencies of all states except Jammu and Kashmir and the UTs of Delhi, Goa, Pondicherry, Daman and Diu and Mizoram and assembly constituencies of all states excluding Jammu and Kashmir and including the UT of Delhi. The process of readjustment and delimitation of Nagaland was governed by Art 371A 2(h) and State of Nagaland Act, 1962, for the UT of Delhi, Delhi Administration Act, 1966<sup>18</sup> and for remaining UTs, the process was governed by Sec 3 and 39 of the Government of Union Territories Act, 1963. Moreover, the act also increased the strength of Associate Members in the Commission from 9 to 10 members- 5 MPs nominated by the Speaker of the Lok Sabha and rest 5 MLAs nominated by the Speaker of the concerned Legislative Assembly.

The Commission allocated the 545 Lok Sabha seats in such a manner that 36 seats were allocated to smaller states with a population of 60 lakhs whereas, the remaining 507 seats were allocated to the rest of the major states with the average population per seat ratio of 10.44

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<sup>17</sup> Ibid.

<sup>18</sup> Sec.3 and 4(1) of Delhi Administration Act, 1966

lakhs.<sup>19</sup> As Sivaramakrishnan observed, ‘...the uninterrupted delimitation of constituencies held so far contained the message that not only would the delimitation exercise take place after every decennial census, the allocation of seats could also be reviewed and modified’.<sup>20</sup>

However, the parliament took a very unprecedented move by amending the Art 82 and 170 of the Constitution by 42nd Constitutional Amendment Act of 1976. The Act, not only had frozen the population figures to that of the 1971 census but had also put a 30-year long moratorium on the further delimitation exercise, till the publication of 2001 Census figures. The reasoning provided by the government was, as the National Population Policy (NPP) was in fore, some states esp. the southern states were more successful in controlling the population growth than their northern counterparts. The freeze was to ‘ensure that the states following the NPP and keeping the growth of population low are not put to any loss of representation in the national parliament’.<sup>21</sup> Continuance of further delimitation exercise as according to the Constitution might result in loss of representation of Southern states in the House of the People on the cost of gaining representation of northern states who failed to put a check on their population growth.

**2.2.4 The Interregnum (1971-2001).** With no Delimitation Commission after 1975, the number of seats in Lok Sabha and state legislative assemblies were unaltered. However, the political map of the country was continuously changing with the creation or re-organisation of new states and union territories. Statehood was conferred to Arunachal Pradesh and Mizoram in 1986, Goa, Daman and Diu were reorganized in 1987, Uttaranchal was carved out of Uttar Pradesh in 2000, National Capital Territory got legislative assembly in 1991, etc. In addition to this, some additional castes and tribes were recognized and included which altered the population of SCs and STs in certain states. These changes were to be reflected in the size of the territorial constituencies of that time. So, despite the embargo, ‘the responsibility of delimiting the parliamentary and assembly constituencies or locating the additional reserved constituencies for the scheduled castes and scheduled tribes was entrusted by Parliament to the Election

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<sup>19</sup> K.C.Sivaramakrishnan, ‘Delimitation in India: A Politico-historical Overview’, Fixing Electoral Boundaries in India, Oxford University Press (2015).

<sup>20</sup> Ibid. pp. 68

<sup>21</sup> A.K. Verma, ‘Issues and Problems in India’s Delimitation Exercise’, *The Indian Journal of Political Science*, Vol. 63, No. 4, (Dec 2002), pp. 371-388

Commission, instead of setting up any separate body for the purpose'.<sup>22</sup> This means the exercise of delimitation was not completely stalled, it was the EC who was playing the role of a Delimitation Commission as and when the need has arisen. When the State of Uttaranchal, Chhattisgarh and Jharkhand were carved out, the EC was entrusted with the task of delimitation exercise under the Respective State Reorganization Acts. The only condition was, not to alter the number of seats in the Lok Sabha and state legislative assemblies in any circumstances.

However, several attempts were made for *status-quo ante* and to revive the process of delimitation. The Dinesh Goswami committee already made certain recommendations in that direction. Later in 1996, the 80th Constitutional Amendment Bill was moved but was lapsed because of the dissolution of the Lok Sabha. An all-party meeting was convened in 1998 by then law minister Ram Jethmalani, where 'some parties favoured readjustment of parliamentary and assembly constituencies, others were opposed to it on the ground that readjustment would "change the community composition and disturb the base on which seats were reserved"...These events, over a decade, indicate that despite some initiatives reflecting foresight, the fear of change and the Indian penchant for procrastination prevailed'.<sup>23</sup>

**2.2.5 Fourth Delimitation Commission and Further Freeze.** With the publication of the Census of 2001, apparently, the 30-year embargo had come to an end. With the enactment of the Delimitation Act, 2002, the delimitation exercise had started. Before that, a Constitutional Amendment Bill was moved in 2000, in favour of conducting the delimitation exercise on the basis of already published Census data of 1991 as it could be irrational to use the decade-old Census figures when the process of the 2001 Census was already in fore and the Census figures were about to come. Hence, the Bill was sent to a Parliamentary Standing Committee chaired by Shri Pranab Mukherjee for more deliberations and consensus. The committee discussed the bill at length. The Ministry of Law and Justice gave the explanation that using the 2001 data would have caused a massive delay in the process of delimitation as it was expected that the data, including that of SC/ST population, would have come out no sooner than 2005. This would also have caused a significant delay in holding fresh elections. With much debate and discussions on this issue, the standing committee decided to show a green signal to this bill in its original form

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<sup>22</sup> Supra 16, pp. 253-254

<sup>23</sup> Supra 19, pp. 73

and the bill after ratification from more than half the states became the Constitution (Eighty-fourth) Amendment Act.

However, by this Act, the parliament decided to extend the freeze till the publication of the first figures after 2026 Census. The same rationale as was given in 1976 was again reiterated nevertheless, this time with greater expectations that the country would achieve a uniform population growth by 2026.

Furthermore, another Constitutional Amendment Act was later enacted by the parliament which amended the Delimitation Act, 2002 to provide for 2001 Census figures as the basis. So, the current status of the law and the Constitution is that the number of seats in the Lok Sabha and legislative assemblies are unchanged as that of the 1971 Census, however, the redrawing and readjustment of the territorial constituencies and the reservation of seats shall be given based on the 2001 Census figures. The final wordings of the recommendations of the fourth Delimitation Commission were:

1. The total number of existing seats as allocated to various states in the 'house of the people' on the basis of the 1971 Census shall remain unchanged till the first census to be taken after the year 2026;
2. The total number of existing seats in the legislative assemblies of all states as fixed on the basis of the 1971 Census shall also remain unaltered till the first census to be taken after the year 2026;
3. The number of seats to be reserved for the scheduled castes (SCs) and scheduled tribes (STs) in the Lok Sabha and state legislative assemblies shall be reworked on the basis of the 2001 Census.
4. Each state shall be re-delimited into territorial parliamentary and assembly constituencies on the basis of the 2001 Census and the extent of such constituencies as delimited now shall be frozen till the first census to be taken after the year 2026,



5. The constituencies shall be redrawn that population (on the basis of the 2001 Census) of each parliamentary and assembly constituency in a state shall, so far as practicable, be the same throughout the state.

*"As a result (of the freeze), the House of the People (Lok Sabha) today represents the population figure of 1971 Census whereas our population has increased manifold in the recent decades,"*

Pranab Mukherjee

This Delimitation Act of 2002 had some differences with its predecessors. The Act altered the composition of the Commission by reducing two judicial members to one and included the State Election Commissioner of the concerned state along with the Chief Election Commissioner. Moreover, the Act empowered the commission to call upon the Registrar-General and Census Commissioner of India or his nominee, the Surveyor General of India or his nominee, any

GIS expert and any other officer of Central or State government for their assistance to the Commission. The commission completed its task and submitted the report in 2008. The state of Jammu and Kashmir was excluded from the purview of the Fourth Delimitation Commission and the parliamentary constituencies in the state as were delimited based on the 1971 Census were still continuing.

The arguments given in favor of the freeze by the governments are ostensibly true and the paper has made an attempt to delve deeper into those arguments. However, successive moratoriums on the delimitation exercise show the greater reluctance of the political class towards any electoral reforms. Tracing the political reasons of the freeze on delimitation revealed that the freeze in 1976 was to covertly maximize the seat share of then ruling Congress party which resulted in better performance of the former in the 1977 general elections esp. in the Southern states.<sup>24</sup> Similarly, resuming delimitation in 2001 might significantly increase the vote share of BJP led NDA, but could reduce the overall vote share of southern regional parties. So, there might be pressure from the southern coalition partners of the government on further freeze.<sup>25</sup> Theoretically, it illustrates the rational choice model of electoral reform, explaining the role of political self-interest. Benoit explains that the 'parties seek institutional change when that change

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<sup>24</sup>Supra 8; pp.1273

<sup>25</sup> Aditi, 'Politics of Electoral Reform: Delimitation Deadlock in India', SOAS Law Journal, 2 SOAS L.J. 46, (2015)

will improve their expected seat share relative to the status quo'.<sup>26</sup> The office-seeking theories say that policy considerations are put on the backstage and the political self-interests jump to the driver's seat if the process like delimitation maximizes the share of legislative seats of the ruling party.<sup>27</sup> Similar has been the case here.

**2.2.6 Problems Emerge from the Freeze.** The intent behind the freeze on the parliamentary and assembly constituencies in 1976 was ostensibly noble as that could adversely affect the representation of southern states in the Lok Sabha, however, Macmillan pointed out that the State representation in Parliament is not a structural part of Lok Sabha.<sup>28</sup> But, the freeze brought with it a plethora of other problems, most concerning is a very high representation ratio. The 60 years (1972-2032) of the freeze, has created a hefty representation ratio in the country where on average, an MP represents around 24 lakhs of the population in his parliamentary constituency. This deferment in the apportionment of seats in the Parliament and in the assemblies 'has certainly created an imbalance in the value of votes of different states'<sup>29</sup>, which violates the fundamental principle of modern representative democracies i.e. 'one-person one-value one-vote'. Those with thickly populated states like UP, Rajasthan, Maharashtra, and Madhya Pradesh etc. represent more people than thinly populated states like Kerala, Sikkim, and Tripura etc.

The freeze has also created a great distortion in the parliamentary representation within the states with some southern states are over-represented because of their low population growth in the last decade than their northern counterparts. This aberration most likely is further aggravated in the next delimitation exercise after the 2031 Census.<sup>30</sup>

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<sup>26</sup> Kenneth Benoit, 'Model of Electoral System Change', *Electoral Studies*, Vol. 23, Issue 3 (2004); pp. 374

<sup>27</sup> Ibid.

<sup>28</sup> Supra 8

<sup>29</sup> A.K. Verma, 'Fourth Delimitation of Constituencies: An Appraisal', *Economic and Political Weekly* (Mar 2008).

<sup>30</sup> K C Sivaramakrishnan, 'North-South Divide and Delimitation Blues', *Economic and Political Weekly* (Sep 2000).

### 3. Debunking the Doxas

#### 3.1 The Population Conundrum

The essential principle on the basis of which delimitation exercises are carried in India is numerical equality.<sup>31</sup> The electoral constituencies must be equal in population. The last change in the number of seats in the Lok Sabha and assembly constituencies took place in the year 1975 when the delimitation commission fixed the number of seats in the Lok Sabha to 543 and legislative assemblies to 3,997. The average population per seat/constituencies in the Lok Sabha was around 10.44 lakhs. It was expected that revisions to the seats would be made after every census.<sup>32</sup>

As mentioned in the above paragraphs, through the 42nd Amendment to the Constitution, a freeze was put on the number of seats in the Lok Sabha and State Assemblies citing the fear of under-representation in the House of the People, expressed by some states. As per the report of Ministry of Home Affairs, a delimitation exercise without all the states controlling their population growth would have led to grave prejudice and injustice against the states, especially the southern states, that had managed to achieve a sustainable population growth rate, while the states that had witnessed excessive population growth would have gotten undue advantage in terms of representation in the parliament.<sup>33</sup>

*"India has over 800 million voters and 543 Lok Sabha Constituencies represent 1.3 billion people.*

*To give true expression to the will of the people, it is time that we look at the legal provisions on the delimitation of the Parliamentary constituencies with a view to increase their number."*

*Pranab Mukherjee*

The issue with this reasoning is that the freeze penalizes the residents of the states that have faced high population growth. McMillan states that 'to deny a person an equal voice in the democratic process because they happen to be living in a state that has a high population growth

<sup>31</sup> see Md. Sanjeer Alam and KC Sivaramakrishnan, 'Fixing Electoral Boundaries in India', Oxford University Press, (2015)

<sup>32</sup> KC Shivaramakrishnan, 'Under-Franchise in Urban Areas: Freeze on Delimitation of Constituencies and Resultant Disparities', Economic and Political Weekly (Dec1997).

<sup>33</sup> Department-Related Parliamentary Standing Committee on Home Affairs- 74th Report on the Constitution (91st Amendment) Bill, 2000.

rate is clearly undefendable'.<sup>34</sup> To penalize the residents for the failure of the state in implementing the population control policies is gross injustice and cannot be the justification for the violation of the principle of 'one vote, one value'. This has also led to a highly disproportionate population per representative in the Lok Sabha. The current average population per representative/constituencies stands at 24 lakhs (approx.), making India's parliament the most ill-represented in the world.<sup>35</sup>

The population in the year 1976, when a freeze on delimitation was put was roughly 51 crores.<sup>36</sup> In the year 2001, when the freeze was extended for another 30 years, the population had grown twofold to 100 crores.<sup>37</sup> Sivaramakrishna opines that the 'real fear is not about population control but political control'.<sup>38</sup> The states that saw the most growth were from North India and to keep the Southern states like Karnataka and Tamil Nadu amongst others from losing their seats, a freeze was enforced. Both in 1976 and 2002, a delimitation exercise would have not only lead to loss of representation to the south Indian states but also a loss of support of the South Indian political parties to the government in the center.<sup>39</sup> Calculations as per the Webster Method tell us that states like Tamil Nadu, Andhra Pradesh & Telangana, Kerala etc. are already over-represented in the parliament by up to 7 seats, while states like Bihar and Uttar Pradesh are underrepresented to the extent of 8 seats according to the 2011 census figure. If a delimitation exercise is carried over, the overrepresented states like Kerala, Tamil Nadu and Karnataka stand to lose the extra seats (*see Appendix A*). Sivaramakrishnan suggests that in order to curb this deadlock, the legislature must ensure that there is no decrease in the existing numbers of seats while readjusting the seats as per the latest census.

One of the arguments against the reasoning behind the freeze on delimitation is a lack of direct correlation between population control and state policies. Aditi points out that state policies do

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<sup>34</sup> Alistair McMillan, 'Constitution 91st Amendment Bill: A Constitutional Fraud?', Economic and Political Weekly (Apr 2001).

<sup>35</sup> Authors' calculation, Reference: Global Parliamentary Report, 2017

<sup>36</sup> Census, 1971

<sup>37</sup> Census, 2001

<sup>38</sup> KC Sivaramakrishna, 'North South Divide and Delimitation Blues', Economic and Political Weekly (Aug 2000).

<sup>39</sup> Supra 25



not have a substantial bearing on the population growth in a state, it is rather the complex socio-economical and historical determinants that determine the population growth of a community.<sup>40</sup> At the core of this argument is the fact that a freeze on delimitation did not and still does not guarantee population control in a state.

However, even if we are to accept the argument of a correlation between an uneven population growth<sup>41</sup> and state policies, advanced by the legislature in enacting the Constitution (84th Amendment) Act, 2002, we must understand that the problem has greatly subsided. The Total Fertility Rate (TFR) in India has come down from 3.2 in 2000 to an all-time low of 2.2 according to the Sample Registration System, 2017, while the states like Bihar, UP, Rajasthan and MP continue to exhibit Fertility Rate higher than the national average, however, there has been a significant decline in these states too.<sup>42</sup> The defaulting states may get a boost from the successful implementation of targeted population control policies but the freeze on the entire delimitation exercise is not at all a prudent decision. Bihar is in the process of formulating a policy for population control<sup>43</sup>, the Population Regulation Bill, 2019, that aims to encourage and promote population control measures nationwide is set to be introduced in the House.

### **3.2 The Question of Federal Imbalance- The Role of Rajya Sabha**

Federalism is part of the basic structure of the Indian Constitution as it envisages the division of powers between the Centre and the States. The Constitution provides for a bicameral legislature with Lok Sabha as the lower house or the House of the People and Rajya Sabha as an upper house or the Council of States. The Constitutional Advisor in 1947, recommended for the bicameral legislature and made arguments in favour of the usefulness of the second chamber.

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<sup>40</sup> Aditi, 'Politics of Electoral Reform: Delimitation Deadlock in India', 2 SOAS L.J. 46 2015.

<sup>41</sup> Milan Vaishnav and Jamie Hinton, 'India's Emerging Crisis of Representation', Carnegie Endowment of International Peace (Mar 2019).

<sup>42</sup> Sample Registration System, 2017

<sup>43</sup> Vasudha Venugopal, 'Bihar: New Policy for Population Control to Be Ready Soon', The Economic Times, (28 Dec 2019).

One of his reasoning was, it provides equal representation to the different constituent units of a federation as in the USA.<sup>44</sup> From the debates and deliberations on the need for a second chamber, the constituent assembly accepted that the conception of the former is to institutionalize the federal principle of Central-State power-sharing relationship.<sup>45</sup>

The upper house of the Indian Parliament is composed of representatives of the states. In theory, members of Rajya Sabha are responsible for advocating the interests of their respective states. Presently, the constitution has fixed the numbers of seats in the Rajya Sabha at 250, with seats allocated to states in proportion to their population. The freeze on the apportionment of seats in the Lok Sabha and State Legislative Assemblies was defended by arguing that the freeze would maintain the federal balance of the country, the same was also reiterated by the National Population Policy 2000. However, it is not the prerogative of the House of the People to maintain the federal balance but the Council of States. Hence, the freeze on the seats of the Lok Sabha will not be detrimental to the federal balance. It can be maintained by reforming the composition and overall functioning of Rajya Sabha.

The way seats are apportioned in the Rajya Sabha is disadvantageous to the states with a higher population. One of the recommendations made by the Punchhi Commission was to give equal representation to the states. The commission remarked that ‘A balance of power between States inter se is desirable and this is possible by equality of representation in the Rajya Sabha. If the Council of States has failed to function as representative of States as originally envisaged, it is because of the asymmetry of coalition politics and the way the party system developed. The functioning of Rajya Sabha can be reformed to achieve the original purpose of federal equilibrium. The Commission, therefore, strongly recommends amendment of the relevant provisions to give equality of seats to States in the Rajya Sabha, irrespective of their population size.’<sup>46</sup>

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<sup>44</sup> Subhash C. Kashyap, ‘Constitutional Law of India’, Universal Law Publishing (2015)

<sup>45</sup> Akshat Agarwal and Kevin James, ‘Rajya Sabha, the Safety Valve of Indian Federalism’, *The Wire*, 8th March 2019

<sup>46</sup> Commission on Centre-State Relations Report, March 2010

However, equal representation to the States in Rajya Sabha similar to the practice in the United States can only be provided when the population size of the States is somewhat uniform. This can be achieved by the further reorganization of larger states like Uttar Pradesh in smaller states. This will also address the problem of skewed per capita representation caused by the freeze on the delimitation.

Milan Vaishnav and Jamie Hinton suggest that indirect election of the members of Rajya Sabha be replaced with direct elections, like the United States of America did in 1913 through the 17th amendment to their constitution, taking away from the state legislature the power to elect the senators and giving it directly to the people.<sup>47</sup> These suggestions should also be discussed and debated in larger policy circles.

### **3.3 Why the freeze on Legislative Assemblies?**

The Forty Second and the Eighty Fourth Constitutional Amendment Act put a blanket ban on the apportionment of seats in both the Lok Sabha and the State Legislative Assemblies. The reasoning given in support of the freeze in Lok Sabha seats citing loss of representation of Southern States can be understood although in a limited sense, as this hypothesis has already been debunked in this paper, but the simultaneous freeze on the state legislative assemblies is beyond one's comprehension.<sup>48</sup> First of all, an increase in the number of seats in the legislative assemblies will not have any adverse impact on the federal balance of the country. In fact, with the increment in the number of seats in legislative assemblies will only reduce the representation ratio, thus strengthening the value of the vote of a citizen. Secondly, the major policy decisions for common citizens esp. related to health, agriculture or important subjects of the State List and many other subjects of the concurrent list are taken by the State governments in a federal form of government. For many other important socio-economic policy matters, the Centre has to rely on the State machinery for its implementation. Thus, the State legislatures automatically become

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<sup>47</sup> Supra 41

<sup>48</sup> Supra 30

equally important as the parliament. The freeze on the number of assembly seats has no logic<sup>49</sup> altogether, except for some vested political interests.

In addition to it, some assemblies also have the upper house called the Legislative Council, the members of which are elected by indirect elections. Most of the states have abolished or are planning to abolish their respective Councils, because of their limited functions. This should be avoided, as the Councils can play a larger role in debates and discussions on the policies of the state governments. The focus should be on strengthening them by increasing participation rather than their abolition. One suggestion is to provide adequate representation to the Panchayats in the Councils. This will not only provide an excellent platform for participative democracy but also strengthen the existing decentralized governance system.

#### 4. Conclusion

The freeze on the delimitation exercise has stalled the process of the reapportionment in parliamentary and assembly constituencies for around four decades and the next delimitation exercise can only be started after the release of 2031 Census figures. The past 50 years have significantly changed the socio-political landscape of the country. The population of the country is projected to increase from around 63.7 Crores in 1976<sup>50</sup> and 121 crores in 2011 to 147.5 Crores in 2031<sup>51</sup>, resulting in the highest per capita representation ratio across the world (*see Appendix B*). The status quo can be disastrous and there is a strong need for a fresh delimitation exercise and de-freezing the seats as the interregnum is going to end in 2026.

"If the British Parliament can have 650 members, the Canadian Parliament can have 443 members and the US Congress can accommodate 535 members, why can't the Indian Parliament do so?"  
Pranab Mukherjee

Moreover, in a pluralistic society like India with a myriad of castes, classes, religions, communities and gender, democracy can only be

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stituencies Delimitation- Deep Freeze Again?', Economic and Political Weekly (Dec

States Census Bureau

<sup>51</sup> Census of India, 'Report of the technical group on population projections', National Commission on Population, (Nov 2019); pp. 43

truly representative when every citizen is adequately represented in the legislature where their voices can be heard. The existing methods of distribution of seats somehow ignore the voices of people in the Indian political system. This is one of the major drawbacks of the First-Past-the-Post (FAPS) electoral system. In order to achieve federalism in its true sense, foundational electoral reforms are required to enhance the substantive representation in this regard. There is a need to think beyond this existing electoral system and explore other alternatives, and Proportional Representation (PR) can be the one. Now is an appropriate time to debate and discuss the viability of this electoral system in the Indian context. Let the much-awaited electoral reforms start with it.

## **5. The Way Forward**

The aforementioned discussion brings forth the political context of the legal issue of delimitation, and clarifies the lack of a purposive attempt to engage with the political and legal concerns it raises. The status quo regarding delimitation, as a result, is just a temporary means to create an artificial sense of political stability, while distorting the technical structures of democracy even further. Even if the justifications for the delimitation freeze are given due consideration, the current delimitation freeze does not account for any active attempts to resolve the concerns involved.

As such, the first step forward here would be to ensure that the legislators engage with the issue through a comprehensive dialogue, while considering the cause and effect of each of the variables involved. Articles 81 and 170 of the Constitution of India, which mandate that a legislator has to represent the same no of voters as far as practicable through out the country, will be instructive for this discussion. As the deadline of the freeze is approaching fast, engaging with this issue to reform the mechanics of the democratic structures becomes all the more vital. Various stakeholders and institutions within which the political processes are embedded, could

initiate this dialogue. This may include the public, the civil society organizations, NGOs, political parties, the Election Commission, as well as the media, which can play a crucial part in raising awareness on the issue and create a political stimulus for the legislators to engage with the issue and act upon it. Pippa Norris identifies such a dialogue as a crucial variable in setting an agenda on electoral reform.<sup>52</sup>

As the conversation on these issues progresses, it would be vital for the legislators to conduct a thorough and comprehensive review of the democratic processes to construct an equitable structure of democracy. This, with respect to delimitation, may follow a two-step program: First the Delimitation Commission must be set up to delimit the constituencies based on the 2031 census and recommend reorganization of states on population basis in order to bring it in conformity with the provisions of the constitution. Second, a State Reorganization Act to give effect to the Delimitation Commission Recommendations by splitting states into smaller ones which will have uniformity in voter representation in Lok Sabha and state legislatures conforming to Articles 81 and 170.

The crucial element would be to understand how the mechanics of voting may influence the electoral processes, the nature as well as the efficiency of the government that it leads to. The current debate on the efficacy of the electoral college system in the US has raised similar questions with respect to the equality of representation implicit in the system. A similar, purposive discourse would be needed in the Indian case as well to address the questions outlined in the discussion herein. This paper aims to take the initial steps in that direction, to generate informed public debate on how to address the concerns of all the stakeholders within the constitutional framework.

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<sup>52</sup> Norris P, 'Cultural Explanations of Electoral Reform: A Policy Cycle Model' (2010) John F Kennedy School of Government, Harvard University Working Paper RWP 10-022, available at: <<http://dash.harvard.edu/handle/1/4449095>>

## Appendixes

### Appendix - A

#### Malapportionment in the Lok Sabha, 2011 (actual) and 2026 (projected)

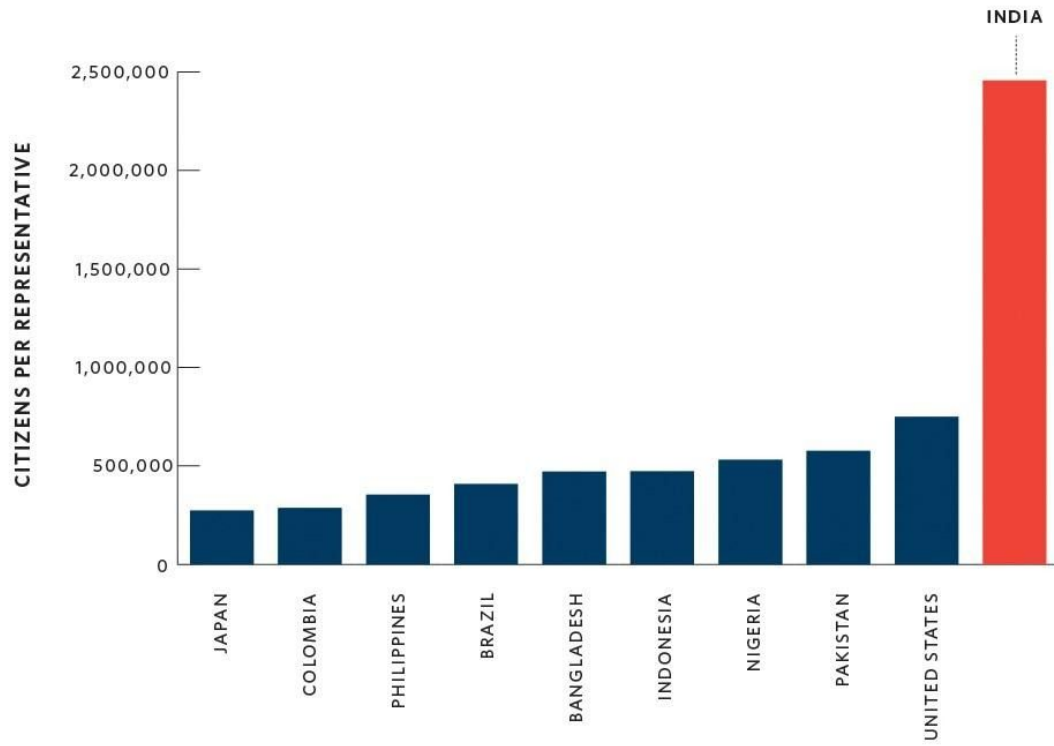
State	Current Seats	Proportional Seats (2011)	Over- and Under-representation (2011)	Proportional Seats (2026)	Over- and Under-representation (2026)
Tamil Nadu	39	32	+7	31	+8
Andhra Pradesh + Telangana	42	37	+5	34	+8
Kerala	20	15	+5	12	+8
Odisha	21	18	+3	18	+3
West Bengal	42	40	+2	38	+4
Karnataka	28	27	+1	26	+2
Himachal Pradesh	4	3	+1	3	+1
Punjab	13	12	+1	12	+1
Uttarakhand	5	4	+1	4	+1
Assam	14	14	0	14	0
Jammu and Kashmir	6	6	0	6	0
Chhattisgarh	11	11	0	12	-1
Delhi	7	7	0	8	-1
Maharashtra	48	49	-1	48	0
Gujarat	26	27	-1	27	-1
Haryana	10	11	-1	11	-1
Jharkhand	14	15	-1	15	-1
Madhya Pradesh	29	32	-3	33	-4
Rajasthan	25	30	-5	31	-6
Bihar	40	46	-6	50	-10
Uttar Pradesh	80	88	-8	91	-11

Source: Milan Vaishnav and Jamie Hinton(2019), India's Emerging Crisis of Representation, Carnegie Endowment for International Peace.



## Appendix – B

**Top Ten Countries With the Largest Representation Ratios**



**Source:** Milan Vaishnav and Jamie Hinton(2019), India’s Emerging Crisis of Representation, Carnegie Endowment for International Peace.

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## About the Editors



**Mrs. Omita Paul,  
IIS (Retd.), Managing Director, PMF**

Mrs. Omita Paul from the IIS has held top levels positions in the Govt. of India. She superannuated from the Govt. as Secretary to the President of India, Former President Late Shri. Pranab Mukherjee. A distinguished administrator she has worked at key positions in Ministries of Finance, Defense, External Affairs, Commerce, and the Information & Broadcasting Ministry and the Planning Commission. She is the Managing Director of the PMF which has done some pioneering work under the SmarTgram Mission with activities in rural areas of Haryana, Uttarakhand and Rajasthan besides other projects. Her published works include: Corporate Soul – Dynamics of Effective Management (co-author), Work Culture in India (Ed.) and Executive Motivation and Human Resource Planning in Airlines – an Asia Experience (Ed.)



**Dr T.K. Viswanathan,  
Secretary General 15<sup>th</sup> Lok Sabha, Director, PMF**

Dr. T.K. Viswanathan is a legal luminary who has held various positions in academia, Government of India and in Lok Sabha. Currently, he is the Director and Senior Advisor at the Pranab Mukherjee Foundation, New Delhi. He is also the Director (ADR), International Centre for Alternative Dispute Resolution, New Delhi. During four decades of his career, he served as a Legal Consultant to the Hon'ble President of India (2014 -2017). He has served as a lawyer, as a Professor of Jurisprudence and as Secretary to Government of India in the Ministry of Law & Justice and as

Secretary-General of Lok Sabha. Chairman of the Expert Committee to review the Cyber laws and the Information Technology Act 2000; and Member Independent Review Authority constituted under section 45(2) of the Unlawful Activities (Prevention) Act of 1967. He has drafted many important landmark legislation over the past two decades and the Government has immensely benefited from his expertise in legislative drafting and in parliamentary and constitutional matters. The Information Technology Act 2000 which laid the basis for Cyber Law in India, the Competition Act 2002 and the Right to Information Act 2005 are three important landmark legislations worth mentioning which have laid the foundation for a new jurisprudence in the Indian legal framework. As the Chairman of the Bankruptcy Laws Reforms Committee 2014 he was responsible for the drafting of the Insolvency and Bankruptcy Code 2016 which is the most important economic reform next only to GST since independence. Dr Viswanathan was awarded Padma Shri by the President of India in 2017. At the Pranab Mukherjee Foundation as a Director & Senior Research Adviser, he has spearheaded two important in-house research projects on the Women's Reservation Bill and the Delimitation of Constituencies of India. Dr. T.K. Viswanathan is a Visiting Professor to the Indian Law Institute and has contributed many articles to legal journals and periodicals and has authored (i) Legislative Drafting - Shaping the Law for the New Millennium; and (ii) Handbook on Arbitration, Mediation and other ADR techniques. Formerly, he was the Editor of the International Centre for Alternative Dispute Resolution (ICADR) Newsletter covering the latest developments in international commercial and investment arbitration.