

Politics of Electoral Reform: Delimitation Deadlock in India

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Electoral processes bear the responsibility of creating the foundation of a functional democracy. However, leaving the legal framework of such processes under the domain of normal legislation may generate aberrations due to partisan political interests. This Article discusses one such case regarding delimitation of constituencies in India. Section 2 analyses the relationship between partisan politics and the process of electoral reform in the theoretical background of rational choice theory as contrasted with Pippa Norris' policy cycle model. Section 3 focuses on the issue of delimitation and traces the political developments in this regard to analyse the current legal framework, whilst Section 4 evaluates the rationale given by the legislature for the current aberrations in delimitation in India. Section 5 involves quantitative analyses of the implications of the current constitutional deadlock regarding delimitation on the Indian democracy. Finally, concluding observations have been made, suggesting resolution of the issue through revitalisation of Norris' constraining elements in the political process. An active involvement of the voters in amending the issue by creating awareness regarding its effects has been suggested.

I. INTRODUCTION

In politics, when principle collides with self-interest, principle tends to retreat with a bloody nose.

Peter Kellner¹

Electoral laws play a vital role in moulding the political framework of a democracy.² However, considering their close proximity to political actors who

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¹ Peter Kellner, 'Electoral reform: Principle or self-interest?' (1995) 33(2) Representation 23.

² DW Rae, V Hanby and J Loosemore, 'Thresholds of Representation and Thresholds of Exclusion: An Analytic Note on Electoral Systems' (1971) 3 Comparative Political Studies 479.

form the direct target group of their influence, these laws are not only the causal elements in a political system, but also a consequence of it.³ Hence, in some instances, political influence in the legislative process supersedes the underlying principle and produces results which might be beneficial to certain political actors, but not in the general democratic interest. This has been aptly illustrated by the process of delimitation of constituencies between states in India, or, more accurately, by the lack thereof.

A key element of democracy is to ensure an equality of the voting share of all the electors, ensured by proportional allocation of seats to a house of people through the process of delimitation. However, in India, owing to a constitutional freeze on delimitation since 1971, there is an increasing gap in representation between various states, which cannot be rectified at least until the year 2031 after the 91st Constitutional Amendment. This Article attempts to study the political linkages in the enforcement and continuance of this constitutional freeze. It will also examine the interplay between political self-interest and electoral reforms.

The second Section analyses the elements of electoral change in the Indian context and the crucial role partisan politics play in this regard. In doing so, a comparison has been drawn between the rational choice theories of electoral change, in particular Benoit's seat-maximizing model⁴ as well as constraining elements from Norris' policy cycle model.⁵

The third Section of the Article traces the process of delimitation after independence and studies legal developments in this regard in their respective political contexts, thus bringing to surface the political linkages at issue. The legal puzzle plaguing the process of delimitation in India is introduced and analysed in context of the theoretical framework. Due to the constraints of scope, delimitation here refers to the proportional apportionment of seats between states according to the population, as this is the dimension that has been most contested and most affected by the constitutional freeze.⁶

³ Kenneth Benoit, 'Electoral Laws as Political Consequences: Explaining the Origins and Change of Electoral Institutions' (2007) 10 Annual Review of Political Science 363.

⁴ Kenneth Benoit, 'Models of electoral system change' (2004) 23(3) Electoral Studies.

⁵ Pippa Norris, 'Cultural Explanations of Electoral Reform: A Policy Cycle Model' (2010) John F Kennedy School of Government, Harvard University Working Paper RWP 10-022 <<http://dash.harvard.edu/handle/1/4449095>> accessed 5 August 2015.

⁶ Alistair McMillan, 'Delimitation, Democracy, and End of Constitutional Freeze' (2000) Economic and Political Weekly 1271.

Further, the political justifications in favour of the constitutional freeze on delimitation have been discussed and questioned in the fourth Section so as to scrutinise their legitimacy for justifying the delimitation freeze.

The fifth Section analyses the consequences of the constitutional freeze and the resultant distortions in representation caused by it. Data from the 1991, 2001 and 2011 censuses has been analysed to illustrate the current differences in representation and the increasing gravity of aberrations in the democratic principle of equality of vote. The proportionate apportionment of seats in accordance with population change has been calculated according to the Webster method of apportionment, advocated by McMillan.⁷

Finally, initialisation of the process of resolution is proposed through active involvement of Norris' constraining elements in the political process. A movement to create public awareness and consensus on the issue is proposed, so as to pressurise the legislature to resolve the legal deadlock at hand.

II. THEORY OF ELECTORAL REFORM: INDIAN CASE

The question of what drives electoral reform cannot be answered comprehensively through a single variable. However, there is a central element recognised as having the most influence on the process, i.e. partisan self-interest. This assertion forms the basis of the rational choice theories of political reform, which regard policy change as an elite level game among partisan interests.⁸ According to one such theory, electoral reform would occur only when it provides for better political prospects for the political actors in power by further maximising their seat shares. If the party or coalition of parties with the power to adopt a potential reform does not stand to gain from it, it will not be adopted.⁹ This is not to diminish the significance of policy in the political framework. However, self-interest precedes policy considerations as the maximisation of seat shares essentially ensures that the respective policy will be enforced gradually.¹⁰

This theory has special significance in countries such as India where the legislative competence of adopting reform lies with the people most affected by

⁷ Alistair McMillan, 'Delimitation in India' in Lisa Handley and Bernard Grofman (eds), *Redistricting in Comparative Perspective* (OUP 2008) 83.

⁸ Benoit, 'Electoral Laws as Political Consequences' (n 3); Benoit, 'Models of electoral system change' (n 4).

⁹ Benoit, 'Models of electoral system change' (n 4).

¹⁰ Barbara Geddes, 'A Game Theoretic Model of Reform in Latin American Democracies' (1991) 85(2) *American Political Science Review* 371.

it. Article 327 of the Indian Constitution¹¹ vests the power of formation of laws regarding elections in the legislature. This was done to keep the electoral processes free from executive interference, so as not to give the ruling party an unfair advantage in the functioning of the electoral system.¹²

However, in India, the deadlock of electoral reform is not just created by the ruling actors¹³ but all the political parties involved, whether or not in power, in furtherance of their common interest.¹⁴ Most parties find themselves plagued by the same issues and the same power interests. Hence, no matter which party comes to power, there is a high motivation to maintain the status quo and the doors to electoral reform remain closed. This has resulted in the control of politics being vested in politics itself,¹⁵ thereby creating a deadlock in reformative processes in electoral laws.

The rational choice theories explain the linkages of ruling parties with regard to deadlock in electoral reform. As for the parties in opposition, or the parties which stand to gain from such reforms, the closest justification for inaction can be found in the arguments forwarded by Andrews and Jackman¹⁶ who contend that changes in electoral laws and processes makes the political parties prone to risk, as they cannot predict their future implications. The role of ideas or values¹⁷, tradition¹⁸ and institutions¹⁹ is also acknowledged in bringing about electoral change. However, political actors' self-interest is still believed to be the

¹¹ The Constitution of India 1949.

¹² Election Commission of India (ECI), 'Debate in Constituent Assembly on Part XIII – Article 289' (*Election Commission of India*, 1949) <http://eci.nic.in/eci_main/eci_publications/books/miscell/Debate_in_Constituent_Assembly_On_Elections.pdf> accessed 5 August 2015.

¹³ Lakshmi Iyer and Maya Reddy, 'Redrawing the Lines: Did Political Incumbents Influence Electoral Redistricting in the World's Largest Democracy?' (2013) Harvard Business School Working Paper 14-051 <http://www.hbs.edu/faculty/Publication%20Files/14-051_6beba5c6-4c63-455d-9f02-0f6bd9364877.pdf> accessed 5 August 2015.

¹⁴ Joginder Kumar Chopra, *Politics of Election Reforms in India* (Mittal Publications 1989).

¹⁵ Heather K Gerken, 'The Double-Edged Sword of Independence: Inoculating Electoral Reform Commissions Against Everyday Politics' (2007) 6(2) *Election Law Journal* 184.

¹⁶ Josephine T Andrews and Robert W Jackman, 'Strategic Fools: Electoral Rule Choice under Extreme Uncertainty' (2005) 24(1) *Electoral Studies* 65.

¹⁷ Sarah Birch and others, *Embodying Democracy: Electoral System Design in Post-communist Europe* (Palgrave Macmillan 2002).

¹⁸ Pippa Norris, 'Introduction: The Politics of Electoral Reform' (1995) 16(1) *International Political Science Review* 3.

¹⁹ Takayuki Sakamoto, 'Explaining Electoral Reform: Japan versus Italy and New Zealand' (1999) 5(4) *Party Politics* 419.

central variable.²⁰ When self-interest acts as the collective force of consensus against change, electoral reform becomes all the more difficult to realise.

The policy cycle model of electoral change, as argued by Norris, identifies a broader framework, with other institutions such as constitutional courts, judicial review or a broader political culture having a constraining effect on the self-motivated actions of political parties.²¹ This has been witnessed in the Indian context as well.²² However, with regard to certain issues, even the constraining effect of these institutions is nullified. This is what aggravates the gravity of the issue of delimitation reform in India, as is discussed in the following Section.

III. DELIMITATION IN INDIA

3.1 Historical Development and Self Interest

Delimitation facilitates proportional apportionment of constituencies in accordance with the 'one person, one vote' principle which, according to Ross, is the 'direct and inevitable consequence of universal suffrage',²³ as it embodies the principle of equality of all the electors. Non-adherence to this principle has been regarded as ethically unjustifiable.²⁴ Given these strong normative claims about malapportionment, it is surprising that India, the largest democracy in the world, has ignored its significance for so long.

The importance of the delimitation process was well recognised by the framers of the Constitution, who referred to it as the 'soul of all elections'.²⁵ This is inherent in the institutional framework provided by the Constitution in this regard. The Constitution of India provides for a periodic exercise of delimitation under Articles 81 and 82 after every census, that is, after every 10 years. Article 327 confers upon the Parliament the power to make laws in relation to delimitation.

²⁰ Carles Boix, 'Setting the Rules of the Game: The Choice of Electoral Systems in Advanced Democracies' (1999) 93(3) *American Political Science Review* 609.

²¹ Norris, 'Cultural Explanations of Electoral Reform' (n 5).

²² Soli Sorabjee, 'Right of Negative Voting' (*Indian Express*, 1 March 2009)

<<http://archive.indianexpress.com/news/right-of-negative-voting/429335/>> accessed 5 August 2015.

²³ Charles Edwards, 'Theoretical and Comparative Aspects of Reapportionment and Redistricting: With Reference to Baker v. Carr' (1962) 15 *Vanderbilt Law Review* 1265, 1269.

²⁴ G Gudgin and PJ Taylor, *Seats, Votes, and the Spatial Organization of Elections* (Pion 1979).

²⁵ ECI (n 12) 106 (Sardar Hukam Singh).

Different versions of delimitation of provinces had been introduced in India with the Government of India Acts of 1919 and 1935 respectively.²⁶ However, the first delimitation of independent India was initiated in 1950, a challenge due to its huge magnitude, owing to universal adult franchise, and the lack of resources to undertake it.²⁷ Therefore, the delimitation power for the first general elections was vested in the office of the President under Sections 6 and 9 of the Representation of the People Act 1950.²⁸

The first delimitation was carried out by the Election Commission under the office of the President, with the resultant proposals being laid before the Parliament for approval. Hence, political interference in the process started early, as the decisions finally reached in the process were said to be influenced by the short term considerations of the members of the House rather than by considerations of general interest.²⁹

To curb this political interference, the idea of an independent body to conduct delimitation was conceived. The Parliament, on the suggestion of the Election Commission, passed the Delimitation Commission Act 1952.³⁰ The composition of the commission was more or less judicial in nature. However, the crucial point here was the concept of associate members to assist the commission, who were to be nominated by the speaker.³¹ These associate members, who were invariably from a political background, though lacking voting rights in the commission, acted as a backdoor entry to political influence even in the new system.³² Furthermore, the gradual increase in the number of these associate members implied the significance of their presence to the members of the Parliament.³³

After the first delimitation commission, two successive commissions were set up at regular intervals in 1962 and 1972 for readjustment of the number of seats in accordance with the latest census. It was after the 1972 delimitation that a freeze on further readjustment until 2001 was imposed by the 42nd amendment to the Constitution in 1976 under the Indira Gandhi regime. The justification forwarded for imposing the freeze was that it unfairly punished those states

²⁶ Government of India Act 1919; Government of India Act 1935; Chandra Pal Singh, 'A century of constituency delimitation in India' (2000) 19(4) Political Geography 517.

²⁷ Singh (n 26).

²⁸ Representation of the People Act 1950 ss 6 and 9.

²⁹ Nagesh Jha, 'Delimitation of Constituencies: A Plea for Some Effective Criteria' (1963) 24(2) The Indian Journal of Political Science 129, 132.

³⁰ Delimitation Commission Act 1952.

³¹ Iyer and Reddy (n 13).

³² RP Bhalla, *Elections in India (1950–1972)* (S Chand and Co 1973).

³³ McMillan, 'Delimitation in India' (n 7).

that had successfully implemented the family planning initiatives.³⁴ The justification holds ground for those who argue that high population rates should not determine the leverage of a state in the Parliament.³⁵ However, the argument lacks logical coherence, as will be discussed in the following Section. Furthermore, the political roots of the decision cannot be disregarded.³⁶

The idea of maximisation of seat share is aptly illustrated by the political developments leading to the freeze. The greater political influence of Congress in the southern areas made subsequent delimitation reducing the seats in the south much less attractive. This was coupled with a strong opposition sentiment in the northern states owing to the casualties of the forced implementation of the National Population Policy Statement in 1976,³⁷ thus making the freeze a means for Congress to maximise its seat share. This assertion can be supported by the performance of Congress in the 1977 elections, especially in the southern states.³⁸

In 2001, when the freeze was set to expire, the political context had changed, with a BJP led NDA government. Resuming delimitation would have been politically favourable to the BJP at this point, as it would have had the effect of increasing seats in the northern Hindi speaking states, where the BJP held a strong ground.³⁹ However, instead of rectifying the aberration, the freeze was further extended till the year 2026. The justifications given were similar, advocating a federal balance between the northern and southern states.⁴⁰ However, considering the composition of the National Democratic Alliance, the real political motivations can be argued to be the pressures exerted by the southern regional parties which were a part of the coalition and crucial for its survival.

As a result, owing to the self-interests of the political actors, this major distortion in the democratic process of India has been constitutionally given a

³⁴ AK Verma, 'Issues and Problems in India's Delimitation Exercise' (2002) 63(4) *Indian Journal of Political Science* 371.

³⁵ Rakesh Kalshian, 'Fertility is Power: Mother of All Paradoxes' (*Outlook India*, 8 March 1999) <<http://www.outlookindia.com/article/Fertility-Is-Power-Mother-Of-All-Paradoxes/207088>> accessed 5 August 2015.

³⁶ KC Sivaramakrishnan, 'North-South Divide and Delimitation Blues' (2000) 35(35-36) *Economic and Political Weekly* 3093.

³⁷ PK Majumdar, *India's Demography: Changing Demographic Scenario in India* (Rawat Publications 2013) 425.

³⁸ McMillan, 'Delimitation, Democracy, and End of Constitutional Freeze' (n 6).

³⁹ *ibid.*

⁴⁰ Alistair McMillan, 'A Constitutional Fraud? The Ninety First Amendment and the Boundaries of Indian Democracy' (2001) *Economic and Political Weekly* 1171.

lifeline of 60 years, with a possibility of rectification only after the census in the year 2031.

3.2 Norris' Constraining Elements in the Indian Context

One would expect the constraining elements, according to Norris' policy cycle approach, to forge a balance in this regard. In the particular case of delimitation, with its direct effect felt only in political circles, the role of general public and even broader political culture is reduced significantly, more so in countries like India where pressing socio-political issues eclipse the 'technical' issue of delimitation.

However, the judiciary can still step in and prevent abrogation of the democratic principle, as was done by the judiciary in the United States with the *Baker v Carr*⁴¹ decision and then again in *Reynolds v Sims*⁴² where the importance of the principle of 'one man, one vote' was reaffirmed.

However, the Indian judiciary suffers an express constitutional bar on interfering with any law regarding delimitation under Article 329 of the Constitution. It is difficult to understand the position adopted by the constitutional framers, due to the lack of comprehensive debate on this position in the legislative assembly.⁴³ However, contextual analysis brings forth the *Colegrove v Green*⁴⁴ judgment in the US deciding the same question. The 'political question' argument given in the judgment can be argued to have formed the basis of the Indian constitutional position in this regard and has been considered in subsequent cases regarding delimitation.

However, the US judiciary stepped forward in the aforementioned subsequent decisions to rectify degenerating aberrations in this regard.⁴⁵ This is in direct contrast to the Indian judiciary, which passively dealt with the issue in cases like *RC Poudyal and others v Union of India and others*,⁴⁶ while using the argument of implausible mathematical equality from *Reynolds* to justify deviations in the Indian case.⁴⁷ Furthermore, the Supreme Court, while holding the right to uniform value of one's vote as non-justiciable, expressly rejected the idea of proportionate appropriation of seats as being a part of the Basic Structure of the

⁴¹ *Baker v Carr* [1962] 369 US 186.

⁴² *Reynolds v Sims* [1964] 377 US 533.

⁴³ ECI (n 12).

⁴⁴ *Colegrove v Green* [1946] 328 US 549.

⁴⁵ Edwards (n 23).

⁴⁶ *RC Poudyal and others v Union of India and others* AIR (1993) SC 1804.

⁴⁷ *ibid* [22]–[29].

Constitution,⁴⁸ thus closing doors for any provisions of Constitutional entrenchment relating to the practice of delimitation, in the future as suggested by Jennings.⁴⁹

Indeed, the contextual specificities of these particular cases, which were not directly linked to the apportionment of seats between states, cannot be ignored. However, the precedence created by these decisions, one of which declared the right to equal vote as non-justiciable and not a part of the basic structure of the Constitution, can be argued to have had a discouraging effect on opting for litigation as a means of resolution in this issue. As one judge mentions, there is less consensus among the theorists regarding judicial activism in the electoral processes⁵⁰ and this can be seen as a reiteration of this approach.

However, a point of significance that can be picked from the judicial rulings is the argument of historical considerations⁵¹ and rational relation.⁵² These were made to justify departure from the 'one man, one vote' principle, derived from the Reynolds case and its threshold of 'legitimate considerations incident to the effectuation of a rational state policy'.⁵³ As such, the legitimacy of the present freeze on delimitation and the resultant discrepancies in representation can be scrutinized on the basis of this standard.

IV. DELIMITATION FREEZE: DEBUNKING THE JUSTIFICATIONS

As discussed above, the main argument given at the fore in defence of the freeze is twofold – to prevent the loss of representation of states effectively enforcing measures of population control, and to maintain the federal balance of the country. These justifications have been reiterated by the National Population Policy 2000 that was 'drafted and discussed almost entirely within a closed circle of the government'.⁵⁴ A critical analysis of these justifications reveals the influence of political interests and questions their 'rational relation' to the freeze.

⁴⁸ *J&K National Panthers Party v Union of India* (2011) 1 SCC 228.

⁴⁹ Ivor Jennings, *Some Characteristics of the Indian Constitution: Being Lectures Given in the University of Madras During March 1952 Under the Sir Alladi Krishnaswami Aiyer Shashtiabdapoorthi Endowment* (OUP 1953).

⁵⁰ *RC Poudyal and others* (n 46) [24] (Justice Venkatachalliah).

⁵¹ *RC Poudyal and others* (n 46); *J&K National Panthers Party v Union of India* (n 48).

⁵² *State of Madhya Pradesh v Bhopal Sugar Industries Ltd* (1964) 6 SCR 846 850.

⁵³ *Reynolds v Sims* (n 42) [579] (Chief Justice Warren).

⁵⁴ Gita Sen, 'India's National Population Policy 2000: A Comment' (2000) 27(2) *Populi* 16.

4.1 Population Control

Fear of potential loss of representation should not be a deterrent to effective population control policies in the states, and the states not enforcing these policies effectively should not be unfairly rewarded with a higher representation in the Parliament.⁵⁵ This is the general essence of the defence. However, the significant point here is that state policies are not the sole factors determinant of population in a particular state.

Studies have highlighted a number of involuntary variables in different regions that influence population rates even when other factors are accounted for.⁵⁶ As such, the inference that states would modify their reproductive behaviour in the context of the distribution of seats seems superficial. The correlation drawn between the delimitation freeze and population control fails to take into account the complex social, economic and historical determinants with regard to population growth.⁵⁷ References have also been made to the specific cultural traditions of the 'Sanskritized and Islamized' north and 'Dravidian' south to play an important role in fertility rates, among other socio-cultural factors.⁵⁸

In light of these arguments, the 'rational relation' between population control and delimitation freeze does not seem proximate enough to warrant legitimacy for malapportionment. As such, using this argument to create aberrations in a democratic principle of this significance is not sound.

4.2 Federal Imbalance

It is strange that proportionality in the Lok Sabha (House of the People) is being resisted on federal grounds, when the basic elements of federalism include proportional representation.⁵⁹

It has been argued that proportional apportioning of seats would lead to the southern states losing representation, which would tilt the balance in the Parliament in the favour of the 'Hindi Heartland States' like Bihar, Uttar

⁵⁵ Rami Chhabra, 'Baking a Bigger Pie: Linking Women's Reservation with Delimitation' (2000) 121 *Manushi* 32.

⁵⁶ Mamta Murthi, Anne-Catherine Guio and Jean Drèze, 'Mortality, Fertility and Gender Bias in India: A District Level Analysis' (1995) 21(4) *Population and Development Review* 745.

⁵⁷ McMillan, 'A Constitutional Fraud?' (n 40).

⁵⁸ Christophe Z Guilmoto, 'The Geography of Fertility in India (1981-1991)' in Christophe Z Guilmoto and Alain Vaguet (eds), *Essays on Population and Space in India* (Institut Français De Pondichéry 2000) 40.

⁵⁹ Arend Lijphart, 'Non-Majoritarian Democracy: A Comparison of Federal and Consociational Theories' (1985) 15(2) *Publius: The Journal of Federalism* 3.

Pradesh and Rajasthan. This may disturb the federal balance of the country, diluting the bargaining power of the southern states.

The first point to consider here is whether the principle of federal balance between northern and southern states is an inherent feature of the Indian democratic system, specifically the Lok Sabha. Furthermore, now that the delimitation process is frozen, is the federal balance being maintained?

It was pointed out by the US Supreme Court in *Reynolds* that, 'Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies'.⁶⁰ The functioning of federal democracies across the globe points out that separate measures to ensure equal bargaining power among different states is not essential in the House of the People.⁶¹ Representation of states can be ensured through the upper house, that is, the Council of States.⁶² The House of the People embodies the elected representatives of the people and the crucial concern to be addressed in its function is the equal representation of all people, rather than the states, which makes delimitation indispensable.⁶³

The distribution of seats, as it currently exists, does not ensure a perfect balance in representation of different states, still demonstrating a tilt towards the north.⁶⁴ Article 81 of the Constitution makes it clear that this was never the intention of the framers, by providing for equal representation of all citizens. As such, the question of maintaining the federal balance in the Lok Sabha should not arise. If such a balance has to be introduced in the Lok Sabha, freezing a system of proportional allocation of seats is hardly the ideal way to ensure it. Furthermore, the Rajya Sabha (Council of States), should be responsible for ensuring equal representation of federal units, rather than the Lok Sabha, which is the House of the People and does not embody 'federal balance' as its principle of composition.⁶⁵

The argument of federal imbalance in the Lok Sabha is often justified on policy grounds, especially regarding central financial allocations. Demographer Ashish Bose argues that federal imbalance in the Lok Sabha may lead to skewed

⁶⁰ *Reynolds v Sims* (n 42) [567] (Chief Justice Warren).

⁶¹ cf Ace Project, 'Boundary Delimitation' (Ace Project 2002).

⁶² McMillan, 'Delimitation in India' (n 7); Lijphart (n 59).

⁶³ David Samuels and Richard Snyder, 'The Value of a Vote: Malapportionment in Comparative Perspective' (2001) 31(4) *British Journal of Political Science* 651.

⁶⁴ McMillan, 'Delimitation, Democracy, and End of Constitutional Freeze' (n 6).

⁶⁵ McMillan, 'A Constitutional Fraud?' (n 40).

distribution of central financial allocations to the states.⁶⁶ The poor efficiency of the northern states in utilising their allocated funds questions the prospective increase in their representation in the Parliament, which may lead to further enhancement in their financial allocations, making them a liability for their southern counterparts.⁶⁷

The economic significance of this argument cannot be questioned. However, linking it to the question of delimitation does not appear to be a rational course of action. Considering this issue in the context of the beneficiaries, the northern states, owing to their poor socio-economic development and high population growth rates, legitimately warrant a higher allocation of funds. Their poor efficiency in implementation can be attributed to a variety of socio-political factors and no doubt needs to be resolved.⁶⁸ However, a state cannot be penalised for its representation in the Parliament as a consequence of it. Denying representation for poor governance would only worsen the implementation gaps, as the existing representatives would have a larger constituency to manage,⁶⁹ with comparatively fewer resources in proportion to its beneficiaries. In addition, using this argument to justify delimitation freeze again implies a deterrent effect in the northern states with regard to population control, which, as discussed above, cannot be held to be a sound assertion.

Further, this issue can be tackled by putting forth alternative solutions to resolve the north-south power imbalance, which may include a shift of balance of powers from the centre to the states. As McMillan argues, such efforts of formalising a constitutional balance would, in turn, have the effect of freeing the flow of revenue from the centre to the states from partisan control. As such, the fears flowing from the argument of a federal imbalance can be assuaged to an extent, without risking the political manipulation of the composition of the House of People.⁷⁰

The real motivation here can be seen as a power imbalance; not a federal one, and this concerns political parties rather than the general interests of the states.⁷¹ This assertion can also be supported by the fact that some of the north-

⁶⁶ Kalshian, 'Fertility is Power' (n 35).

⁶⁷ *ibid.*

⁶⁸ Navi Radjou, 'India's Biggest Economic Challenge' (*Harvard Business Review*, 2 June 2009) <<https://hbr.org/2009/06/indias-biggest-economic-challe>> accessed 5 August 2015.

⁶⁹ Sanjay Kumar, 'Delimitation of Constituencies' (*The Hindu*, 17 September 2001) <<http://www.thehindu.com/2001/09/17/stories/05172524.html>> accessed 5 August 2015.

⁷⁰ McMillan, 'Delimitation in India' (n 7).

⁷¹ Sivaramakrishnan (n 36).

eastern states, despite prospectively losing half their representation from the next delimitation, are seldom mentioned as a part of the federal imbalance argument.

In addition, even if the concern of loss of representation of southern states is considered, a temporary freeze in delimitation, thereby corroding the basic principle of democratic elections, seems, at best, a way to avoid the question rather than address it. It does not ensure a balanced representation of the states, and prevents balanced representation of the people.

This assertion is strengthened by the reasoning behind the year 2026 being the cut off year for delimitation as put forth by the National Population policy. This year has been identified as one when the country shall reach the level of replacement population growth, thereby causing population rates to stabilise, and making delimitation more feasible. This argument is based on a mere speculation and ignores the fact that the disparities are going to be much harder to cement as the delimitation exercise is postponed further.⁷² Further, the concern of federal imbalance will not necessarily be redressed by this approach. As such, this might open the doors for yet another extension in the constitutional freeze, as the political concerns would still be present, with a potentially starker effect.⁷³

V. MAPPING THE EFFECTS

Since the last delimitation exercise based on the 1971 census, there have been four population censuses, the latest one in 2011. A study of the data reported by these censuses points out the gravity of distortion caused by the delimitation of seats between states and the increasing contrast over time. Figure 1 below compiles the population data of different states according to the 2011 census and compares the proportionate allocation of Lok Sabha seats (done in accordance with the Webster method of apportionment) to the actual number of seats allocated to each state. While states like Tamil Nadu and Kerala are over represented to a great extent, having 7 and 5 seats more than their proposed proportionate allocation, northern states like Uttar Pradesh, Bihar and Rajasthan are under represented by as high as nine seats. 21 states out of 35, that is, 60% of states exhibit a certain degree of deviation in representation in comparison to their populations. Thus there exists a stark inequality in voting strength across various states.

⁷² Verma, 'Issues and Problems in India's Delimitation Exercise' (n 34).

⁷³ McMillan, 'Delimitation in India' (n 7).

Figure 1

States	Population (2011 Census)	Proportionate Allocation (2011)*	Actual Number of Seats	Difference between actual and proportionate allocation (2011)
Jammu and Kashmir	12541302	6	6	0
Himachal Pradesh	6864602	3	4	1
Punjab	27743338	12	13	1
Chandigarh	1055450	1	1	0
Uttarakhand	10086292	4	5	1
Haryana	25351462	11	10	-1
NCT of Delhi	16787941	7	7	0
Rajasthan	68548437	30	25	-5
Uttar Pradesh	199812341	89	80	-9
Bihar	104099452	46	40	-6
Sikkim	610577	1	1	0
Arunachal Pradesh	1383727	1	2	1
Nagaland	1978502	1	1	0
Manipur	2570390	1	2	1
Mizoram	1097206	1	1	0
Tripura	3673917	2	2	0
Meghalaya	2966889	1	2	1
Assam	31205576	14	14	0
West Bengal	91276115	40	42	2
Jharkhand	32988134	15	14	-1
Odisha	41974218	19	21	2
Chhattisgarh	25545198	11	11	0
Madhya Pradesh	72626809	32	29	-3
Gujarat	60439692	27	26	-1
Daman and Diu	243247	1	1	0
Dadra and Nagar Haveli	343709	1	1	0
Maharashtra	112374333	50	48	-2
Andhra Pradesh	84580777	38	42	4
Karnataka	61095297	27	28	1
Goa	1458545	1	2	1
Lakshadweep	64473	1	1	0
Kerala	33406061	15	20	5
Tamil Nadu	72147030	32	39	7
Puducherry	1247953	1	1	0
A and N Islands	380581	1	1	0
India	1210569573	543	543	0

*Calculated using a divisor of 2255000, with a minimum allocation of 1 seat.

Compiled by the author using the Webster Method of apportionment of seats. For detailed analysis, please refer to Appendix I.

This distortion has amplified in the last couple of decades, as the population growth rate of the northern states is higher than that of the south. Figure 2 shows this gradual increase in the gap with every census since 1991. Andhra Pradesh, for instance, did not exhibit any disproportionality in representation according to the 1991 census data. However, the distortion starts in 2001 with it being overrepresented by 2 seats. The effect is magnified further in the year 2011 where the gap raises to 4 seats. Similarly, in case of Rajasthan, the underrepresentation is expanding from 3 seats in 1991 to 4 in 2001 and 5 in 2011.

Thus, it can be inferred that by the time the current freeze expires and the delimitation exercise is finally undertaken after the 2031 census, the aberrations would be even more difficult to bridge. The effect would seem all the more stark and the political reconciliations would become all the more difficult to achieve.⁷⁴ More states are starting to exhibit a disproportionality in representation, with Gujarat and Punjab joining in 2011.

⁷⁴ Verma, 'Issues and Problems in India's Delimitation Exercise' (n 34); AK Verma, 'Fourth Delimitation of Constituencies: An Appraisal' (2008) 43(11) *Economic and Political Weekly* 12; McMillan, 'Delimitation in India' (n 7).

Figure 2⁷⁵				
States	Actual Number of Seats	1991 proportionate Allocation	2001 Proportionate allocation	2011 Proportionate Allocation
Jammu and Kashmir	6	5	5	6
Himachal Pradesh	4	3	3	3
Punjab	13	13	13	12
Chandigarh	1	1	1	1
Uttarakhand	5	-	4	4
Haryana	10	10	11	11
NCT of Delhi	7	6	7	7
Rajasthan	25	28	29	30
Uttar Pradesh	80	88 (85)*	87	89
Bihar	40	55 (54)*	43	46
Sikkim	1	1	1	1
Arunachal Pradesh	2	1	1	1
Nagaland	1	1	1	1
Manipur	2	1	1	1
Mizoram	1	1	1	1
Tripura	2	2	2	2
Meghalaya	2	1	1	1
Assam	14	14	14	14
West Bengal	42	43	42	40
Jharkhand	14	-	14	15
Odisha	21	21	19	19
Chhattisgarh	11	-	11	11
Madhya Pradesh	29	41(40)*	31	32
Gujarat	26	26	26	27
Daman and Diu	1	1	1	1
DNH	1	1	1	1
Maharashtra	48	50	51	50
Andhra Pradesh	42	42	40	38
Karnataka	28	29	28	27
Goa	2	1	1	1
Lakshadweep	1	1	1	1
Kerala	20	18	17	15
Tamil Nadu	39	36	33	32
Puducherry	1	1	1	1
A and N Islands	1	1	1	1
India	543	543	543	543

*Actual number of seats in brackets. Three new states were formed out of Uttar Pradesh (Uttarakhand), Madhya Pradesh (Chhattisgarh) and Bihar (Jharkhand) in 2000.

⁷⁵ Source for 1991 and 2001 proportionate allocation data, McMillan, 'Delimitation in India' (n 7).

In addition to these anomalies, the delimitation of seats for reservation of Schedules Castes and Schedules Tribes in 2008, according to the 2001 census, creates yet another issue. Due to the usage of two different censuses, the percentage of reservation of seats is being calculated in accordance with the increased population of scheduled castes and scheduled tribes, while the base seats remain frozen. As such the increase in the reserved seats would be at the cost of general seats, thereby making the distortions in representativeness even more complex.⁷⁶

VI. THE WAY FORWARD

The Indian position on the issue of delimitation seems like a desperate attempt to avoid a politically sensitive situation rather than establishing a clear standpoint. Even if the justifications for delimitation are given due consideration, no active attempts to resolve the concerns in this regard have been made. As a result, the democratic foundations of equal representation are being mutilated, with the gap becoming harder to bridge with time. Therefore, the need to end the dormancy of Norris' constraining elements is becoming increasingly significant in this case.

Delimitation witnesses an acute lack of awareness and common consensus outside the core political and academic circles. The voters as well as elements of the civil society fail to identify delimitation as an essential part of the representative character of the Indian democracy. Civil society platforms like Association for Democratic Reforms (ADR) and People's Union for Civil Liberties (PUCL), while playing an active role in the formulation of a common consensus regarding various dimensions of electoral reforms, yield zero results on their web portals with respect to delimitation. This illustrates ignorance around the issue of delimitation, arguably due to the fact that the general population is more concerned with day to day life issues than building an 'ideal' democracy.⁷⁷

Due to this ignorance, an argument can well be advanced that the past attempts to recommence delimitation, including the recommendations of the Dinesh Goswami Committee (1990) and the resultant Constitution 71st amendment bill (1992), and the Constitution 80th amendment bill (1996), could have taken effect

⁷⁶ Verma, 'Fourth Delimitation of Constituencies: An Appraisal' (n 74).

⁷⁷ Trilochan Sastry, 'Civil Society, Indian Elections and Democracy Today' (2004) Indian Institute of Management Bangalore Working Paper No 465, 15
<<http://www.iimb.ernet.in/research/sites/default/files/WP%20No.%20465.pdf>> accessed 5 August 2015.

if not for the lack of public awareness and attention with respect to this issue, which gave political self-interest free reign.⁷⁸

A parallel can be drawn with the first phase of the policy cycle model of electoral change which involves an agenda setting stage. In this phase, various stakeholders including the public, the political parties, the civil society organisations, the NGOs and the media are engaged with a particular issue, which highlights the key problem to be addressed and pushes forward for an institutional reform for its resolution.⁷⁹ This step is clearly being ignored in the case of delimitation in India, which has resulted in deadlock. Thus, it can be argued in the present case that the failure to generate public attention, debate and consensus on this issue has had an effect of strengthening the influence of partisan interests in the election reform process, while diluting constraining elements of pressure from political culture.

Political representation involves three key processes of identification, mobilisation and adjudication.⁸⁰ To initiate electoral change, especially with reference to delimitation, the goals and means to attain equal voting share needs to be identified. Further, civil society organisations and the media, together with international standards and ideologies⁸¹ can be utilised to generate awareness and create a common consensus among the voters as to the resolution of this issue.⁸² These elements can play a vital role in reaching the third process of adjudication where the deadlock is finally resolved.

In the process, the central role of the election commission should be duly considered. The Election Commission of India has recognised the significance of delimitation through the years of constitutional freeze, although quite passively, arguably owing to a strong consensus in political circles.⁸³ The commission should recognise its central position in this issue and can play the role of an instigator in bringing it to surface. The constitutional framework does not confer a direct legislative power on the election commission in this regard. However, its central position in the electoral process may prove vital in creating a persuasive socio-political environment for the legislature to take steps in

⁷⁸ Sivaramakrishnan (n 36).

⁷⁹ Norris, 'Cultural Explanations of Electoral Reform' (n 5) 7.

⁸⁰ Peter A Hall and others, 'Introduction: The Politics of Representation in the Global Age' in Peter A Hall and others (eds), *The Politics of Representation in the Global Age: Identification, Mobilization, and Adjudication* (CUP 2014).

⁸¹ International Foundation for Electoral Systems, 'Challenging the Norms and Standards of Election Administration' (International Foundation for Electoral Systems 2007) 59–74.

⁸² Heather M Creek, 'Who Cares about Electoral Reform?' (University of Maryland American Politics Workshop, 26 March 2010).

⁸³ McMillan, 'Delimitation in India' (n 7).

order to resolve the democratic distortions at hand,⁸⁴ as it did in the 'None of the Above' issue, among others.⁸⁵

Public awareness, coupled with a clarity of methodology and rules to be employed in the process would ensure transparency by direct participation of the voters in the policy making process on this issue. In addition, it would also encourage innovation in the academic circles to formulate a system of delimitation that considers the ancillary interests of power balance among others, so as to make it compatible with the current political context and ensuring its enforcement. Such efforts could play a vital role in instigating the process of electoral change in this regard.

VII. CONCLUSION

Given the close interface between politics and electoral processes, political influence in the development of electoral laws can hardly be mitigated. However, it should not be strengthened to such an extent that the basic principles of democratic governance are threatened, as in the case of delimitation in India. The significance of an issue of procedural connotation, such as the one at hand, is hard to realise in the face of more pressing substantive issues with a more proximate influence on democracy. However, it should be remembered that invisibility of the foundation does not nullify its significance.

Democratic governance is a system in which choices are made and compromises forged among competing interests. In order to resolve the delimitation crisis in India, a strand of competing interests needs to surface in order to balance the partisan interests which remain the dominant determinant in the delimitation process. The status quo merely pursues a short sighted, politically motivated policy aimed at avoiding a crucial question rather than resolving it, thereby making it more complex for future considerations. As such, an intervention by non-party actors within the frameworks of politics is required to initiate a process of resolution in this regard, with the aim of ensuring a fairer democratic setup.

⁸⁴ Lloyd I Rudolph and Susanne H Rudolph, 'Redoing the Constitutional Design: From an Interventionist to a Regulatory State' in Atul Kohli (ed), *The Success of India's Democracy* (CUP 2001).

⁸⁵ Sorabjee, 'Right of Negative Voting' (n 22).

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Appendix I – Apportionment of Seats According to Webster Method (2011 Census)

States	Population (2011 Census)	Divisor (Total Population/ Total Seats)	State Quota (State Population/ Divisor)	Proportioned Seats by Rounding Off	State Quota according to the Adjusted Divisor*	Proportioned Seats by Rounding Off (Adjusted Divisor)	Actual No. of Seats	Difference between Actual and Proportionate Allocation (2011)
Jammu & Kashmir	12541302	2229409.895	5.625390839	6	5.561552993	6	6	0
Himachal Pradesh	6864602	2229409.895	3.079111659	3	3.044169401	3	4	1
Punjab	27743338	2229409.895	12.44425176	12	12.30303237	12	13	1
Chandigarh	1055450	2229409.895	0.473421241	1	0.46804878	1	1	0
Uttarakhand	10086292	2229409.895	4.524198095	5	4.472856763	4	5	1
Haryana	25351462	2229409.895	11.37137772	11	11.24233348	11	10	-1
NCT of Delhi	16787941	2229409.895	7.530217318	8	7.444763193	7	7	0
Rajasthan	68548437	2229409.895	30.74734581	31	30.39841996	30	25	-5
Uttar Pradesh	199812341	2229409.895	89.62566348	90	88.60857694	89	80	-9
Bihar	104099452	2229409.895	46.69372475	47	46.16383681	46	40	-6
Sikkim	610577	2229409.895	0.273873818	1	0.270765854	1	1	0
Arunachal Pradesh	1383727	2229409.895	0.620669623	1	0.613626164	1	2	1
Nagaland	1978502	2229409.895	0.887455467	1	0.877384479	1	1	0
Manipur	2570390	2229409.895	1.15294635	1	1.139862528	1	2	1
Mizoram	1097206	2229409.895	0.492150861	1	0.486565854	1	1	0
Tripura	3673917	2229409.895	1.64793249	2	1.629231486	2	2	0
Meghalaya	2966889	2229409.895	1.330795654	1	1.31569357	1	2	1
Assam	31205576	2229409.895	13.9972358	14	13.8383929	14	14	0
West Bengal	91276115	2229409.895	40.94182734	41	40.47721286	40	42	2
Jharkhand	32988134	2229409.895	14.79680075	15	14.62888426	15	14	-1

States (continued)	Population (2011 Census)	Divisor (Total Population/ Total Seats)	State Quota (State Population/ Divisor)	Proportioned Seats by Rounding Off	State Quota according to the Adjusted Divisor*	Proportioned Seats by Rounding Off (Adjusted Divisor)	Actual No. of Seats	Difference between Actual and Proportionate Allocation (2011)
Odisha	41974218	2229409.895	18.82750144	19	18.6138439	19	21	2
Chhattisgarh	25545198	2229409.895	11.45827784	11	11.32824745	11	11	0
Madhya Pradesh	72626809	2229409.895	32.57669627	33	32.20701064	32	29	-3
Gujarat	60439692	2229409.895	27.11017482	27	26.80252417	27	26	-1
Daman & Diu	243247	2229409.895	0.109108245	1	0.107870067	1	1	0
Dadra & Nagar Haveli	343709	2229409.895	0.154170393	1	0.152420843	1	1	0
Maharashtra	112374333	2229409.895	50.40541591	50	49.8334071	50	48	-2
Andhra Pradesh	84580777	2229409.895	37.93863892	38	37.5081051	38	42	4
Karnataka	61095297	2229409.895	27.40424591	27	27.09325809	27	28	1
Goa	1458545	2229409.895	0.654229177	1	0.646804878	1	2	1
Lakshadweep	64473	2229409.895	0.028919312	1	0.028591131	1	1	0
Kerala	33406061	2229409.895	14.98426156	15	14.81421774	15	20	5
Tamil Nadu	72147030	2229409.895	32.36149178	32	31.99424834	32	39	7
Puducherry	1247953	2229409.895	0.559768306	1	0.553415965	1	1	0
A & N Islands	380581	2229409.895	0.170709299	1	0.168772062	1	1	0
All India	1210569573		543	550		543	543	0

*Calculated using a divisor of 2255000, with a minimum allocation of 1 seat. This has been done to keep the total seats constant.