

Indian Constitution:  
Crossing The Borders of Religion, Caste,  
Language and Culture

**Prof. (Dr.) Fr. Davis Panadan Varghese CMI<sup>1</sup> & Dr. Sini John<sup>2</sup>**

<sup>1</sup>Principal, Christ Academy Institute of Law, Christ Nagar, Begur-Koppa Road, Bengaluru.

<sup>2</sup>Vice Principal, Christ Academy Institute of Law, Christ Nagar, Bengaluru.

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**ABSTRACT:**

India, a highly diverse society, is an endangered pluralist polity. India is now challenged by forces that threaten its fragile political consensus. This paper is divided into different sections. The first section offers an overview of India's diversity, state forms and nationalisms in broad brushstrokes. The second focuses on a particular change experience: constitution-making in India (1946–49). Shifting to the present, the third section discusses sources of inclusion and exclusion in the Indian polity. Focusing on reservations, discrimination against Muslims, Hindu nationalism and violence, it outlines key dimensions of exclusion in India today. The final section summarizes key lessons from the Indian experience with pluralism which takes the country beyond borders of religion, caste, language and culture. In the case of the Indian Constitution, the problem was not with its approach as with the normative resources fashioned, which remained deficient for the accommodation of religious diversity, and cultural diversities. It may be noted that the provisions of the Indian Constitution regarding the right to religious liberty cover all the freedoms relating to religion set forth in the Universal Declaration of Human Rights,<sup>1</sup> which was adopted by the General Assembly of the United Nations at the Palais de Chaillot, Paris, on December 10, 1948.

**KEYWORDS:**

Crossing the boarders, multiculturalism, cross-cutting social diversity, civil society, inclusion.

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**INTRODUCTION:**

India, a highly diverse society, is an endangered pluralist polity. An early adopter of a constitutional framework that recognized group-differentiated rights. India is now challenged by forces that threaten its fragile political consensus. This paper is divided into different sections. The first section offers an overview of India's diversity, state forms and nationalisms in broad brushstrokes. The second focuses on a particular change experience: constitution-making in India (1946–49). The Indian Constitution's adoption of group-differentiated rights in 1950 presaged multiculturalism in some respects. However, despite a range of group rights, including quotas for Untouchable and tribal groups, and self-government rights for linguistic groups, a normative deficit remained in India's constitutional framework with respect to the protection of minority cultures. Shifting to the present, the third section discusses sources of inclusion and exclusion in the Indian polity. Focusing on reservations, discrimination against Muslims, Hindu nationalism and violence, it outlines key dimensions of exclusion in India today. The final section summarizes key lessons from the Indian experience with pluralism which takes the country beyond borders of religion, caste, language and culture.

**1. INDIA'S DIVERSITY: CROSSING THE BOARDERS**

In comparative terms, India's demographic diversity is significant in at least two respects. First, it offers an example of extensive cross-cutting diversity along the lines of religion, language, caste and tribe. Hindus form a majority of the population, around 79.8% out of a total of 1.21 billion.<sup>2</sup> With around 180 million Muslims (approximately 14.2% of the population), India is also the third-largest Muslim country in the world, due to become the largest Muslim country by 2050. The population of India's other major religious communities is: Christian 2.3%, Sikh 1.7%, Buddhist 0.7% and Jain 0.4%. However, the followers of each religion speak different languages and belong to a variety of sects, castes and tribes. In terms of language, there are some 22 official languages and 122 major languages listed in the census.<sup>3</sup>

Hindi speakers constituted 41% of the population, followed by Bengali, Telugu, Marathi, Tamil and Urdu speakers, each constituting more than 5% of the population. Religious and caste divisions have been of enduring significance in national politics, with linguistic divisions becoming less contentious since the 1950s.<sup>4</sup> Second, India's diversity is long-standing and not a product of recent migration. Unlike in most Western democracies, the rights of immigrants have not been central to debates on pluralism in India. India's different religious, linguistic and tribal groups are all national minorities of one kind or another.<sup>5</sup>

It is true that Islam and Christianity are viewed by many Hindu nationalists as foreign religions, unlike Sikhism, Jainism and Buddhism, which are regarded as the progeny of Hinduism and indigenous to Indian soil. Nevertheless, with some of the oldest Muslim and Christian communities in the world,<sup>6</sup> and with most followers of Islam and Christianity seen as converts from Hinduism, religious minorities are not viewed as recent migrants, unlike in Europe and North America. The rights of migrant minorities have been a contentious issue mainly at the sub-national level, with sons-of-the-soil movements against migrants influential in some states.

With cross-cutting and long-standing patterns of diversity, which groups are to be considered India's minorities is not straightforward.<sup>7</sup> In national politics, the term has, for the most part, denoted religious minorities, particularly Muslims. In late colonial India, other groups claiming special representation (notably Dalits) also called themselves a minority, although during constitution-making attempts were made to restrict the term's use.<sup>8</sup> In numerical terms, as well as with regard to marginalized status, Dalits or Scheduled Castes (SC, approximately 16.6%) and tribal groups or Scheduled Tribes (ST, approximate 8.6%) are also minorities. At the sub-national level, the majority Hindus are a numerical minority in some states. In Hindu nationalist accounts, Hindus are often described as a besieged minority in a part of the world dominated by Muslims.<sup>9</sup>

With regards to language, the speakers of the majority language

Hindi (the Indian Constitution does not designate a single national language), as well as each of the 22 official languages (each state can choose its official language) constitute a minority in some provinces. As such, depending on the unit of analysis, there is hardly any group that lacks a claim to minority status. In caste terms, the official category Other Backward Classes (OBC), comprising several intermediate lower castes, constitutes a majority, nearly 44% of the population according to many estimates (based on the last caste census of 1931). Upper castes, including Brahmins and other dominant castes, constitute around 16%, a numerical minority.<sup>10</sup>

## **2. STATE FORMS: CROSSING THE BORDERS**

Historical legacies of state formation in India favour a pluralist polity. In contrast with the history of European state formation, which saw the centralization of power and sovereignty, in pre-colonial India sub-continental empires competed with regional kingdoms as state forms.<sup>11</sup> Sub-continental empires that extended across much of Indian territory date back to the Mauryan empire of the fourth century and include the Mughal and British empires between the 16th and 20th centuries. These were constrained from within by forms of indirect rule (e.g., the Princely States under British rule) and from without by regional kingdoms. Across varied forms, under both indigenous and foreign rulers, state power in India remained limited in its reach. The segmented and constrained nature of state power was not just a pragmatic concession to the power of local chieftains according to scholars, but also a principle derived from Hindu religious legal texts (dharmastras).<sup>12</sup> A society consisting of different social groups was seen as prior to the state and independent of it. The rulers' duty was to protect and uphold the respective customs and laws of self-regulating social groups.<sup>13</sup>

Segmented and constrained forms of state power have favoured the accommodation of societal pluralism in several respects. The precedence of the moral order of society implied that the state would not seek to impose its preferred vision throughout society, but would re-

spect the internal rules and practices of social groups so long as taxes and revenues were paid.<sup>14</sup> Furthermore, the social order was compartmentalized, which meant that communities could share “a sense of brotherhood within themselves,” but “were not united to each other by fellow feeling,” even though they were not antagonistic with each other.<sup>15</sup> External groups could be incorporated into this segmentary social order by creating a circle of their own, which existed not so much in open communication with the rest, but in a “back-to-back adjacency.”<sup>16</sup> The caste system epitomized this order of self-regulating groups, embodying a principle of asymmetric hierarchy, i.e., a group that was at the top in terms of ritual status might be at the middle or bottom in terms of the distribution of political power and economic holdings in a region. A social order that was stratified along multiple axes made for greater intra-group diversity than in systems based on a symmetrical hierarchy, but also enabled the endurance of inequality, making it “cognitively more difficult to identify the structure of dominance.”<sup>17</sup>

In sum, long-term trajectories of state forms in India have supported the accommodation of diversity, but within an order defined by hierarchy and inequality, what might be termed hierarchical or segmented pluralism.

### **3. CONSTITUTION-MAKING, 1946–49: A PIVOT POINT FOR CROSSING BORDERS**

The Indian Constitution is accommodationist with respect to diversity along the axes of religion, caste, tribe and language, although differentially so. It was ahead of its time in instituting cultural rights for minorities and affirmative action for historically disadvantaged groups within a broadly liberal democratic framework. Group rights in the Indian Constitution include legal pluralism in religious family law (Hindus, Muslims, Christians, Parsis), affirmative action including quotas (known as reservations in India) in legislatures, government jobs and educational institutions for lower caste and tribal groups, as well as self-government rights for linguistic and tribal groups.

As such, many features of India's 1950 Constitution presage multiculturalism in Western democracies.<sup>18</sup> As a post-colonial nation-state that was undergoing a bitter partition along religious lines at the time of constitution-making, it was not inevitable that India would adopt a constitution with multicultural type provisions. To begin with, historical legacies favoured group rights. From the late 18th century, East India Company administrators sought to exempt parts of religious law (pertaining to family law, caste and religious endowments) from the purview of their regulatory action.<sup>19</sup> Group-based representation in colonial legislatures dates back to the late 19th century, with Indians included in the representative institutions of the Raj as members of particular groups.<sup>20</sup> Different mechanisms of group representation came to be instituted including separate electorates, reserved seats, weightage (guaranteed representation for minorities in excess of their enumerated demographic share) and nomination.<sup>21</sup>

In the end, short-term factors<sup>22</sup> weighing against the adoption of group rights in the Indian Constitution were unable to overwhelm the longer-term legacies that favoured accommodation. Constitutional outcomes varied across different policy areas. In the case of religious minorities, separate electorates, and legislative and employment quotas (termed "political safeguards" or "reservations") were abolished. These were retained for ex-Untouchables and tribals—Scheduled Castes (SC) and Scheduled Tribes (ST) in official usage—as temporary affirmative action provisions.

The Constitution inaugurated a shift from consociationalism to affirmative action as the overarching framework for quotas. Provisions for cultural protection were retained in the form of religious family laws for instance, and territorial autonomy for tribal groups. Overall, the constitutional position on group rights represented a cutback on colonial constitutionalism but was also distinct from the assimilationist positions espoused by Hindu nationalists in the Constituent Assembly.<sup>23</sup>

Finally, the ideological legacy of India's national movement—its commitment to a plural and egalitarian polity—meant that a normative

vocabulary was fashioned in which some group-differentiated provisions were legitimate.

#### **4. CONSTITUTIONAL APPROACHES TO CROSSING THE BORDERS OF RELIGION, RACE, CASTE, SEX, AND PLACE OF BIRTH**

The Preamble of the Constitution must secure is "Liberty of the thought, expression, belief, faith and worship" which take the citizens of the country beyond the borders of religion, caste, sex, and culture. In conformity with the principle of the Secular State the Constitution establishes a single common citizenship. The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them - Article 15 (1). In particular, no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment ; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public - Article 15 (2).

"Full religious liberty,"<sup>24</sup> observes H. G. Wood, "is much more than freedom of worship. Freedom of speech and freedom of worship are not just conterminous. Freedom of the press, freedom to propagate the faith, freedom to educate in the faith, freedom to express the faith in deeds, in social activities and organization, freedom to organize and control the life of the religious association and to define its faith, economic independence through the ownership of property, and the right to keep in effective touch with fellow-believers in every land- all these elements belong to religious liberty in the full sense of the term." In view of the complex and comprehensive nature of the freedom of religion, it would be hazardous to assert that our Constitution establishes full religious liberty in India. But the importance attached to this liberty in the Indian Constitution can be seen from the fact that right to freedom of religion forms one of the seven categories into which the fundamental rights given in Part III of the Constitution are divided.

The particular religious rights contained in Part III of the Indian Constitution have a wide scope, and they cover both the personal and social aspects of religion. Moreover, these rights are enjoyed not only by citizens but even by aliens. All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion - Article 25 (1). There is more in this statement than meets the eye, and if we examine all its implications, we shall find that this Article covers a much wider field of religious freedom than is immediately apparent.<sup>25</sup>

But to get an adequate idea of the nature and extent of the freedom of religion in India today, we have to pass in review the various articles, scattered all over the Constitution, which make the new Indian polity a Secular. The secular nature of the Indian polity can be demonstrated in various ways. The Constitution makes it clear that no one religion shall be singled out for endowment by the State. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses of any particular religion or religious denomination- Article 27.<sup>26</sup> Article 28, dealing with the freedom as to attendance at religious instruction or worship in educational institutions, lays down that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, reasonably enough, this provision shall not apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. On the other hand, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent. The educational facilities provided by the State are to be enjoyed equally by all the citizens. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only



of religion, race, caste, language or any of them- Article 29 (2).

The equality of the main political rights, viz., the right to be elected, and the right to hold public office, is guaranteed to all irrespective of religion, as is seen from the following provisions of territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them- Article 325. Articles 84 and 173, dealing with the eligibility for election to the Parliament and the State Legislatures respectively, do not make membership of a particular religion a condition of eligibility or a ground for disqualification.

Regarding the right to hold public office, the Constitution lays down that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State - Article 16 (2). Conversely, Article 23 (2), arming the State with the power of imposing compulsory service for public purposes, limits the exercise of this power by providing that the State, in imposing such service, shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

The Amendment of Article 19 in the Constitution Amendment Act, 1951, provides that the restrictions which the State may impose on the right to freedom of speech and expression to safeguard public order must be reasonable. By implication, this provision may also be taken to apply to restrictions on freedom of religion imposed on the same ground. This means that the courts of law have the power of scrutinizing the reasonableness of the restrictions placed by the State on the right to religious freedom ostensibly to safeguard public order.

## **5. THE CONSTITUTION AND INSTITUTIONS: CROSS-CUTTING SOCIAL DIVERSITY**

The Indian Constitution, despite its flaws, remains a key source

of inclusion in the polity. It endures and continues to elicit a high level of support from across the political spectrum, including from critics seeking political change. While its substantive pluralist provisions discussed above remain under-fulfilled in some areas such as religious freedom, their articulation in the Constitution has created standards for inclusion against which actions can be assessed and challenged.

The judiciary have been sources of inclusion, with powers to review legislative and executive actions for their constitutionality, and regular elections to elect governments overseen by an independent Election Commission. Institutional heterogeneity in the political system, with a tension between parliamentary sovereignty on the one hand, and judicial review on the other, has also been a source of inclusion. The higher judiciary in particular has often asserted itself as the main guardian of the Constitution to compensate for its unelected status, frequently challenging the actions of governments and issuing reprimands for their behaviour.<sup>27</sup> The ambiguity regarding who the final authority is on the Constitution acts as a source of inclusion, with claimants disappointed by the decision of one institution able to petition another.

A federal division of powers between the national and regional governments ("centre" and "states"), with significant powers vested in states (including education and health), has served as a source of inclusion. A flexible federal framework has allowed for the recognition of demands for autonomy by linguistic and tribal groups through a re-drawing of state boundaries over time.<sup>28</sup> Periodic conflicts and violence have been contained in particular regions, while life elsewhere continues as usual.<sup>29</sup> In this, federalism has been helped by the nature of India's social diversity that is grouped around multiple axes and dispersed, rather than centripetal.<sup>30</sup>

This has prevented the emergence of a single enduring country-wide cleavage that threatens the centre, unlike in other countries. A federal system underpinned by cross-cutting social diversity has offered opportunities for the expression and accommodation of demands

arising from multiple sources of exclusion.

## **6. POLITICAL PARTIES AND ELECTIONS: MULTI-ETHNIC AND SOURCES OF INCLUSION**

Political parties and elections have also served as sources of inclusion. Political parties, for the most part, have been multi-ethnic and have offered avenues for the inclusion of minorities through, for instance, key positions in party organizations. Politicians have facilitated a politics of bargaining and compromise between different social interests. Furthermore, the plenitude of largely free elections at all levels allows groups that are under-included in one instance to contest again soon at another level. The large number of parties competing for votes in multiple electoral arenas has meant that in seeking to craft winning electoral coalitions, parties have often sought to court groups beyond their core supporters, thereby offering opportunities for inclusion. In elected institutions at the central, provincial, district and village levels, the representation of lower castes has been increasing.

The fairness of elections has been maintained by an election commission and a judiciary that derive their legitimacy from their independence from the executive. On several occasions, the processes of electoral and party competition have also been exclusionary, with electoral appeals by political parties seeking to build electoral majorities of Hindus against Muslims, “backward castes” against forward castes, Maharashtrais or Assamese against outsiders, for instance. Nevertheless, overall, the working of the Constitution through the party system and elections has offered “great resources of self-correction.”<sup>31</sup>

## **7. CIVIL SOCIETY**

In addition to political institutions, civil society organizations and a free press have been a source of inclusion in the polity. Critical yet engaged in their stance towards government, and multi-ethnic in their membership, these have served to highlight violations of the rights of vulnerable groups and to hold state agencies accountable through courts, street protests, television and newspaper debates. Unlike in

some other countries, human rights are not seen as an external, Western imposition, in part because of a large sector of local rights organizations closely engaged with grassroots struggles to protect the constitutional framework of rights. Occasionally, civil society organizations have acted in partnership with the state to design inclusionary legislation and administrative processes; for instance, in the enactment of a Right to Information Act and a Rural Employment Guarantee Act that is the world's largest poverty alleviation program.<sup>32</sup> A relatively free press, with several 24-hour news channels competing over headlines and exclusive reports, has also served to highlight the violations of rights by political leaders and governments.

Finally, radical social movements as well as a critical intelligentsia have been important sources of inclusion. Intellectuals have sought to be the voice of the vulnerable and played a leading role in recent protests against the killings and harassment of critics of Hindu nationalism and police action on student campuses.<sup>33</sup> While Hindu nationalists have waged counter-campaigns of hate and disinformation through social media platforms, social movements and intellectuals have served to highlight the abuses of state power and to forge solidarities across identity groups.

## **8. EMERGING LESSONS: CROSSING THE BORDERS OF RELIGION, CASTE, LANGUAGE AND CULTURE**

1. A political order that seeks to accommodate societal pluralism within terms of equality needs a shared framework for the contestation of differences. The Indian Constitution (1950) was ahead of its time in instituting cultural rights for minorities and affirmative action for historically disadvantaged groups within a broadly liberal democratic framework. Comprising conceptions of democracy, secularism, social justice, development and national unity, the legitimating vocabulary of the Indian Constitution has provided a common framework for debate over time. The Constitution continues to be seen as exemplifying the enduring values of the polity by all political actors and is often invoked to challenge the actions of gov-

ernments and leaders. As such, the many forms of discrimination and violence associated with societal pluralism in contemporary India have a common framework of political values to which the wronged can appeal, across the communities and interests to which they belong.

2. India's institutional heterogeneity in the area of group rights offers an example of a plural polity. The Indian Constitution recognizes multiple sources of cultural identity: religion, language and tribe. It also offers different routes to group autonomy—territorial (federalism, autonomous councils) as well non-territorial (religious personal laws). Even in relation to the same type of group, religious minorities, the Constitution embodies distinct approaches—integrationist (e.g., abolition of group representation) and weak multicultural (e.g., religious freedom including separate personal laws). As such, claimants for recognition and assistance from the state have multiple paths to choose from. For instance, Muslims can self-identify as members of a religious group in matters of family law, as citizens whose rights to religious freedom have been unjustly curtailed in a given instance, or members of a “backward class” for special treatment in education and employment in a few states. The Indian case suggests that state policies do not necessarily entrench group differences but can also serve to pluralize group claims.
3. Indian constitution-makers articulated inclusive civic notions of national identity, but these were more accommodating of linguistic diversity than religious diversity. While nationalist histories highlighting the contributions of leaders belonging to different communities to the freedom struggle were written and sought to be disseminated through educational curricula, these were received as official, state histories. National slogans such as “unity in diversity” did have popular resonance in domains such as Hindi cinema; however, their translation into everyday citizenship remained limited.<sup>34</sup>
4. India's experience of federalism highlights that pluralism is a

multi-dimensional concept, i.e., a policy that is pluralism-enhancing along one dimension (e.g., linguistic or tribal autonomy) can decrease pluralism along another dimension (e.g., religious freedom), or increase inter-group and intra-group inequalities.

5. A wider process is needed for the value of diversity to take root "in the minds of the decision makers at all levels," as well as in the social attitudes of ordinary citizens, so that the "manifestation of diversity becomes a matter of celebration rather than a cause for social turmoil and political anxiety." Public debates on diversity need to be a central part of such a process, both within institutions such as legislatures, schools and, more widely in the electronic and social media.

## CONCLUSION

In the case of the Indian Constitution, the problem was not with its approach as with the normative resources fashioned, which remained deficient for the accommodation of religious diversity, and cultural diversities. It may be noted that the provisions of the Indian Constitution regarding the right to religious liberty cover all the freedoms relating to religion set forth in the Universal Declaration of Human Rights,<sup>35</sup> which was adopted by the General Assembly of the United Nations at the Palais de Chaillot, Paris, on December 10, 1948. Article 18 of this important document states, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." Since the General Assembly has proclaimed this Declaration of Human Rights as a common standard of achievement for all peoples and all nations, Indians may well be proud that at least in the matters of States, the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

**Endnote:**

1. This document is published as Appendix III to *Human Rights: A Symposium* slumped repaired by UNESCO. (Allan Wingate, London, 1949), 134-167.
2. "Population by Religious Community," accessed 11 October 2021,
3. "Statement 1: Abstract of Speakers' Strength of Languages and Mother Tongues 2001," accessed 11 October 2021
4. Niraja Gopal Jayal (2006), *Representing India: Ethnic Diversity and the Governance of Public Institutions* (New York: Palgrave Macmillan).
5. As such, the distinction between the rights of immigrant groups and national minorities is arguably less relevant. Will Kymlicka (1995), *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press), 40.
6. Muslim presence in India dates back to the eighth century in Kerala and Sindh, expanding after the establishment of the Sultanate in north India. Christian presence in India is also long-standing, dating back to the followers of St. Thomas (called Syrian Christians) in the first century CE. Satish Saberwal (2006), "On the Making of Muslims in India Historically," *Sociological Bulletin* 55: 237-66.
7. Myron Weiner (1997), "India's Minorities: Who Are They? What Do They Want?" in *State and Politics in India*, edited by Partha Chatterjee (Delhi: Oxford University Press), 459-95.
8. Rochana Bajpai (2011a), *Debating Difference: Group Rights and Liberal Democracy in India* (Delhi: Oxford University Press), 89-110.
9. Weiner (1997), 460. 10 Stanley J. Tambiah (1986), *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (London: I.B. Tauris and Co.), 33.
10. Ashutosh Varshney and David Stuligross (2002), "Ethnic Diversities, Constitutional Designs and Public Policies in India," in *The Architecture of Democracy: Constitutional Design, Conflict Management and Democracy*, edited by Andrew Reynolds (Oxford: Oxford University Press), 444.
11. Susanne H. Rudolph and Lloyd I. Rudolph (2008), *Explaining Indian Democracy: A Fifty-Year Perspective, 1956-2006* (New Delhi: Oxford University Press), 51.
12. Rudolph and Rudolph (2008), 11, 18.
13. Sudipta Kaviraj (2010), *The Trajectories of the Indian State* (Ranikhet: Permanent Black), 12.
14. Kaviraj (2010), 12-13.
15. Rudolph and Rudolph (2008), 9.
16. Rudolph and Rudolph (2008), 10.
17. Kaviraj (2010), 12-13.
18. Rochana Bajpai (1997), "Recognizing Minorities: Some Aspects of the Indian Constituent Assembly Debates, 1946-49," MPhil thesis, University of Global Centre for Pluralism Accounting for Change in Diverse Societies 23 Why did India Choose Pluralism? Oxford; Gurpeet Mahajan (1998), *Identities and Rights: Aspects of Liberal Democracy*

- in India (Delhi: Oxford University Press); Rajeev Bhargava (2000), "Democratic Vision of a New Republic: India, 1950," in *Transforming India: Social and Political Dynamics of Democracy*, edited by F. Frankel et al (Delhi: Oxford University Press), 26–59.
19. Groups defined in terms of social and economic criteria (landholders, universities and trade associations) were also represented in legislative bodies. Judith Brown (1990), *Modern India: The Origins of an Asian Democracy* (Oxford: Oxford University Press), 142; Khilnani (1997).
  20. Archana Parasher (1992), *Women and Family Law Reform in India* (New Delhi: Sage), 62.
  21. James Chiriyankandath (2000), "Creating a Secular State in a Religious Country: The Debate in the Indian Constituent Assembly," *Commonwealth and Comparative Politics* 38 (2): 16–18.
  22. While such long-standing antecedents favoured multicultural provisions, there were also factors that went against their adoption. India's bloody partition along religious lines that unfolded during constitution-making was regarded by the Congress as the outcome of colonial policies such as separate electorates for Muslims. The Congress was numerically dominant in the Constituent Assembly, and after Partition its majority rose to 82%. Partition had weakened minorities in strategic and organizational terms, as well as numerically, and also hardened the public mood against minority demands. The Congress no longer needed to conciliate minority parties in order to avert Partition. It also faced stronger pressures from its Hindu nationalist members opposed to concessions to minorities. In addition, several obstacles that face the adoption of multicultural policies in other post-colonial contexts could be observed in the Indian case as well. These included the association of minority protections with colonial divide and rule, and the view that minorities were a potential "fifth column"—a threat to the security of the state on account of loyalty to a rival neighbouring state.
  23. Several factors enabled the retention of group-differentiated rights, albeit within an altered framework. The Congress party had made public commitments to the protection of minorities through fundamental rights, as well as reservations for Untouchables. It also had a long-standing commitment to non-majoritarian decision-making. The presence in key power positions of political actors with a staunch commitment to the rights of minorities and historically disadvantaged groups, such as Prime Minister Jawaharlal Nehru and the chair of the Drafting Committee Dr. B.R. Ambedkar, prevented the withdrawal of group rights in the face of Partition and anti-minority sentiment.
  24. "Full religious liberty," observes H. G. Wood, "is. Accessed on 18 October 2021. Link: <https://www.jstor.org/stable/42743402>.
  25. Although the freedom of religion guaranteed by Article 25 is wide in scope, it is far from being absolute. It is subject to public order, morality and health, and to the



other provisions of Part III of the Constitution- Article 25 (1). This freedom also shall not affect the operation of any existing law, or prevent the State from making any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Restrictions on freedom of religion in the interest of public order, morality and health are generally - accepted grounds for State intervention. For example, the Statement on Human Rights and Religious Freedom" to which a reference has already been made, while asserting that the right to religious freedom is inalienable, admits that it is not an unconditional right. " If the adherents to any form of religion," says the Statement, "so exercise their right of religious freedom as to disturb public order, or endanger public secular outrage the basic moral conceptions which are essential to both, they do so at their own risk, and the State to which they belong, or in which they are resident, is entitled to invoke the sanctions of law against them.,, It stands to reason that the State, whose primary function is to preserve public order and security, must have the power to suppress activities, which, though ostensibly religious, tend to jeopardize the security and tranquillity of the State.

26. The decision of the Constituent Assembly to keep out God from the Constitution will doubtless please the atheists, who regard the existence of God as a metaphysical myth. But this is by no means the opinion of the bulk of the Indian people. In fact, one of the essential features of Indian culture is its deep concern with the supernatural, and the whole of the Indian cultural tradition is embedded in the belief in and the worship of the Supreme Being in diverse ways. The ancient Greeks regarded the constitution of any country as the expression of the soul of that particular nation. How can our Constitution be a genuine expression of the soul of the Indian nation when there is not even a mention of the fons et origo of the genius of India?
27. Pratap Bhanu Mehta (2007), "India's Unlikely Democracy: The Rise of Judicial Sovereignty," *Journal of Democracy* 18 (2): 70–83.
28. Thus, states with substantial tribal populations have been carved out of linguistic states, e.g., Chhattisgarh and Jharkhand in 2000.
29. Myron Weiner (1989), *The Indian Paradox: Essays in Indian Politics* (New Delhi: Sage), 67.
30. James Manor (2002), "Centre-State Relations," in *The Success of India's Democracy* (Delhi: Cambridge University Press), 124.
31. The cultural rights of minorities were thus interpreted largely as negative liberties. The duties required of the state were limited to forbearance from interference. On the general point, see Henry Shue (1980), *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton, NJ: Princeton University Press) Kymlicka (1995), 45.
32. National Rural Employment Guarantee Act (2005), accessed 21 October 2021

33. Around 40 celebrated writers from across the country returned their national literary awards in 2015. In the first quarter of 2016, hundreds of academics in India and abroad petitioned, marched and undertook teach-ins against police action on campuses at Jawaharlal Nehru University, Delhi, and the University of Hyderabad, Hyderabad. Amrita Basu (2016), "More Than Meets the Eye: Sub Rosa Violence in Hindu Nationalist India," Institute for Religion, Culture and Public Life (IRCPL) Conference on Democracy and Religious Pluralism, Columbia University, New York, 12–13 February.
34. By contrast, Hindu nationalist accounts of Indian national identity established a firmer hold in society, particularly since the 1980s. Here, the Indian nation was seen as fundamentally Hindu, violated for centuries by Islamic and Christian invaders. Perhaps the most serious defect of the new Indian nation state was "the failure to create a liberal-pluralistic public rhetorical and imaginative culture whose ideas could have worked at the grassroots level to oppose those of the Hindu right." The long shadow of the country's partition along religious lines in 1947 continues to limit political imagination with regard to the accommodation of religious diversity.
35. This document is published as Appendix III to Human Rights: A Sympympo- slump repaired by UNESCO. (Allan Wingate, London, 1949), 134-167.

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