

# Managing Diversity: Understanding Indian Perspective of Equal Citizenship

## Abstract

A deeply divided society with, supposedly, a majoritarian type of government, India nevertheless has successfully sustained its democratic system. The prime reason behind the success in sustaining democracy is its principles of equal citizenship which not only gives importance to individual rights but emphasizes promotion of cultural values of diverse communities. India is a hugely fragmented society with multiple political aspirations and therefore, some of the issues of diversity may still exist. Nonetheless, India has developed policies which have successfully addressed many other socio-political issues. These policies are amongst the major factors that help sustaining India's democracy.

**Keywords:** India, Democracy, Managing Diversity, Equality.

## Introduction

Issues of diversity and conflicts are presently one of the most discussed subjects. As managing diversity is a key to the success of democracy, modern nation-states are trying to find answers to issues of diversity. While some of them are successful in their pursuit for managing diversity, others still struggling to find better options. Whereas it is generally agreed that diversity needs to be adequately managed, there are still difficulties on how to handle it and what sort of institutions and practices are required for managing diversity adequately. This paper studies how India, one of the most diverse countries in the world, responds to issues of diversity. By studying the Constitutional and other legal provisions along with government policies the paper argues that India has enough principles capable of promoting equality between different communities and thus manages diversity effectively. So far, these principles rarely find space in the political discourse of the country. However, they play important role in reducing tensions between groups and communities and thus provide necessary fodder for sustaining democracy too.

Methodologically, therefore, it derives at inferences by not only reading the existing constitutional provisions that emphasize the importance of cultural values of different communities but also by studying the visions and the rationality of these provisions expressed during constitutional debates.

## Diversity and Conflict in India

Before discussing the provisions of the Constitution it is significant to understand nature of Indian society. India is a hugely diverse country with tens of religious denominations, hundreds of dialects and various ethnic traditions. The country is so much diverse that at the time of Independence and framing of the Constitution, the Constituent Assembly faced challenges even to give a name to the newly freed country. Talking about the issues India faces, Tagore once wrote,

*Her problem was the problem of the world in miniature. India is too vast in its area and too diverse in its races. It is many countries packed in one geographical receptacle. It is just the opposite of what Europe truly is, namely one country made into many. Thus Europe in its culture and growth has had advantage of the strength of the many, as well as the strength of the one. India on the contrary, being naturally many, yet adventitiously one has all along suffered from the looseness of its diversity and the feebleness of its unity (Tagore, 2012: 101).*

Comparing with western nations Tagore further says, *Nationalists says, for example, look at Switzerland, where, in spite of race differences, the people have solidified into a nation. Yet, remember that in*



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*Switzerland the races can mingle, they can intermarry, because they are of the same blood. In India there is no common birthright. And when we talk of Western Nationality we forget that the nations there do not have that physical repulsion, one for the other that we have between different castes. Have we an instance in the whole world where a people who are not allowed to mingle their bloodshed for one another except by coercion or for mercenary purpose? And can we ever hope that these moral barriers against our race amalgamation will not stand in the way of our political unity* (Tagore, 2012: 109-10).

Interestingly, India's tryst with diversity started long before its tryst with destiny. The first instance of national leaders acknowledging the importance of diversity was seen in the Nehru Report, the first major attempt by the Indians to draft a constitutional framework for the country. It insisted on reserving seats for Muslims at the Center and in Provinces in which they were in a minority. It also recommended for creation of 'Linguistic Provinces' and full protection to cultural and religious interest of minorities. Chagla, a member of the Muslim League and close to Jinnah, even argued in a pamphlet Muslim League and Nehru Report that "even without the amendments, the Nehru Report was not prejudicial to the interest of the Muslim community; and was a great document which served the national purpose of the country while safeguarding the rights of minorities" (Panigrahi, 2004: 49).

#### **Constitution and Equal Citizenship**

Broadly speaking, our Constitution is not a piece of legal provisions with sharp emphasis on individual based 'equal citizenship'. Rather Indian perspective on equal citizenship is a fine mixture of traditional liberal values and multicultural necessities. It not only gives importance to basic individual rights, it also values and respects different group traditions. Considering this facts, it may not be wrong to claim that John Rawls 'theory of Justice', acclaimed as one of the finest treatises on justice in modern times might have been influenced by Indian Constitution. Thus, Gurpreet Mahajan has to say that "the path that India adopted self-consciously, therefore, was one that acknowledged persons as citizens of the state as well as members of specific cultural communities. While political rights of participation were extended to all, nevertheless on other matters due consideration was given to community affiliations and membership" (Mahajan, 2005:289).

The Constitution tries to give its citizens in best possible way a multicultural society by incorporating various forms of group rights and recognition of cultural necessities of various groups. The way in which the name of the nation was given itself suggests how serious framers of the Constitutions were about the diversity that the country is (Parekh, 2015: 37-38.). In fact, preferential treatments have been extended to a

variety of groups at different level with different degrees.

This perspective on equal citizenship is instrumental in managing diversity and conflict and thus also sustaining democracy in spite of so much diversity within. In the heart of this perspective lie some of the important policies and provisions in the Constitution which are discussed below.

#### **Managing Political Differences: Formation of States**

The Constitutional fathers acknowledged the fact that India, right from the dawn of civilization has been a unique case of unity and diversity. It may be reminded here that the provinces and the local governments in various empires in the past, from the Mauryas to the Mughals, enjoyed considerable degree of autonomy too (Report of Sarkaria Commission). Thus, it seems that the very natural tendencies in India point out towards pluralism and federalism as necessary basis for its governance. The most apparent policy of managing diversity in Independent India is policies of territorial autonomy and formation of states along linguistic and ethnic lines. This policy has clearly reduced tensions and potential challenge to the national integrity. Federal units and sub-units have been formed on the basis of either distinctness of the geographical region or cultural interest or even economic and administrative reasons. Thus, Federalism plays a big role in ensuring India's unity, stability and survival as a polity in the face of persistent regionalism.

Though the Constitution initially conceived of the division of the country into states 'for convenience of administration', subsequently the ideal of this federalism became preservation of diversity through subsequent arrangements and reorganization of the states. Federal units have been created in order to accommodate linguistic and other identities of various groups. For example, many of the languages, except Sindhi, Urdu and Sanskrit, in India are regionally rooted. Thus, States have been reorganized to fulfill the demands of many of the linguistic groups. By the mid-1960s linguistic agitations in various parts of the country had resulted in formation of more or less unilingual states such as Andhra Pradesh, Tamil Nadu, Karnataka, Gujarat Maharashtra, Punjab, Haryana, Himachal Pradesh, Madhya Pradesh and Rajasthan. It may be pointed out here that the Bengal Presidency had already been divided into Bengal, Bihar, Orissa and Assam during the British Raj itself. As Assam witnessed the rise of tribal insurgencies in the 1960s, the State had been divided into different units by the 1970s.

Within states further sub-federal units are created for protection of particular ethnic communities. For instance, the creation of sub-federal units on the basis of Sixth Schedule within some states in the North-East or demarcation of boundaries with an aim to restrict the access of 'others' through Inner Line Permit System in the hope of safeguarding minority/ties settled within the territory from economic, social and political exploitation in the hands of the outsiders are all in line with the intended territorial response to intra-state conflicts. These sorts of

territorial arrangements are hoped to provide regional or ethnic (including linguistic) autonomy so that intra-state conflicts may be settled. (Meetei, 2018: 1-12)

### **Breaking Hierarchies: Safeguards for Vulnerable Groups**

Caste structures have been a dominant feature of Indian society. People in the caste hierarchy often suffered discrimination on account of social segregation and exclusion. Historically it has been an impediment to growth and political development of the country. Therefore breaking the hierarchies and bridging the gap between different castes becomes necessary for sustaining the largest democracy. Accordingly, the Constitution provides safeguards for the vulnerable groups, offering economic opportunity, administrative patronage and positions of power to the weaker sections, so that the caste as a stratification system in which distances are rigidly maintained through endogamy, pollution, and the legitimacy of rituals and caste as a system of conflict reduces its impact on the modern social system. The constitution, in several parts particularly in parts III, IV and XVI, spells out special considerations for these groups. These Parts grant special privileges to the peripheral groups in society – the schedule castes and tribes and the backward classes – in terms of reserved seats and jobs in the various legislatures and in the administrative services.

Besides, the Parliament of India also passed reforms and welfare laws including the Untouchability (Offences) Act. Likewise the Governments in the States were encouraged to guarantee special privileges to the depressed sections of the community. In the same way, measures have been enacted for concessions to the scheduled caste and tribes and the backward classes in admission to educational institutions and employment. The abolition of feudalism and the redistribution of land rights in the rural areas remove another important root of social cleavage. These measures are taken up to uplift them so that the whole society becomes truly democratic and equal. This kind of special privilege is also justified on the idea of rectifying the past injustices, or giving some sort of autonomy to groups that had previously been discriminated against by the social system, or creating a sense of belongingness among marginalized groups.

It may also be mentioned here that the adequate protection and upliftment of Schedule Castes and Schedule Tribes is a fundamental duty of the State; and is an expressed Directive Principle of State Policy (Article 26).<sup>1</sup> For them special representation is also provided in the House of the People (Article 330), and the State Assemblies (Article 332). Again in order to protect their interests and for looking up to their welfare, special Ministers can be appointed in certain States ;(Article 338) and the President appoints special officers for the same purpose (Article 330/ Article 330, 332). The special officer's duty is to investigate all matters relating to the safeguards provided for the SCs and Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct.

### **Equality of Religions: Accommodating Religious Minorities**

India is a multi-religious country. Not only major religious communities are spread all over the country, but the people belonging to all religious communities reside in each village and town in the country. In states as vast and diverse as India, there may be some issues concerning minorities as it is not easy to regulate relations between different religious communities especially when they are politically mobilized.

However, the Constitution provides the minorities with safeguards. The Preamble itself describes the concept of secularism in such a manner that the State has no religion of its own, and there is equal respect for and protection to all religions. No one is to be discriminated on grounds of religion and everyone is guaranteed full and equal freedom of religion. Article 30 of the Indian Constitution states that the minorities have rights to establish and administer educational institutions of their choice. Minorities can impart instructions to their children in their own languages. The National Commission for Minorities undertakes review of the implementation of the policies formulated by the Union and state governments with regard to minorities. It looks into specific complaints regarding deprivation of rights and safeguards of minorities, and conducts research and analysis on the question of avoidance of discrimination against the minorities. The Forty-Forth Amendment to the Constitution in 1978 added article 30(3) which provides that in making any law providing for the compulsory acquisition of any property or an educational institution established and administered by a minority, the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under Article 30(1). Significantly, religion cannot be a subject of direct legislation. That means faith is held too sacred to be a matter of state regulation and temporal control.

Propagation of religion is also guaranteed whether it is carried on by a Church, a Monastery, or an organization. Religious freedom covers not only religious beliefs, doctrines, rituals, ceremonies and modes of worship; but also acts done in pursuance of religious beliefs and practices. A denomination has right even to manage the affairs of religion,( Article 26 (b).) to establish and maintain religious and charitable institutions,( Article 26 (a).) to acquire and own property, and to manage it in accordance with religious prescriptions and law.( Article 26 (c)-(d).) In the "matters of religion" which include essential religious practices of the religion, the denominational right is absolute.<sup>2</sup>

The reasons for giving minorities special rights under article 30 can be discussed here. It is, first, to inculcate a sense of unity in the country by accepting and tolerating their cultures, and religions. The obvious rationale behind the thinking of the founding fathers, was, that the distinctive ethos, religious and cultural identity of small communities, should not be swamped by the majority, but that they

should be carefully cultivated, creating an enlivening mosaic of unity in diversity. It is also to promote the feeling of security by safeguarding the religious atmosphere in which the minority community wants their children to grow up. In Re the Kerala Education Bill, 1957 the Supreme Court said, the minorities quite understandably regard it as essential that the education of their children should be in accordance with the teachings of their religion and they hold quite honestly that such an education cannot be obtained in an ordinary school, designed for all the members of the public but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should be imparted to the children of their community in an atmosphere congenial to the growth of their culture. Our constitution makers recognized the validity of their claim and to allay their fears, conferred on them the fundamental rights under Article 30(1). (cited in Mathew, 1987)

Again, to develop a sense of equality among the unequal sections of the nation, freedom has been granted to minorities to prepare their children for careers in life in the way they consider best. In the Ahmadabad St. Xavier's College Society v. State of Gujarat Justice Khanna said

*The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and feeling of confidence. Special rights of minorities were designed not to create inequality. Their real effect was to bring about equality by enshrining the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of those institutions. The differential treatment of the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea, but become a living reality and result in true, genuine equality and not merely in theory but also in fact. (Judgments on Minority Educational Rights: 362)*

#### **Rights of Linguistic Minorities: Equal Opportunity for all**

India has always been a multi-lingual civilization with a complicated system of communications both literally and vertically, and a constant interplay between local, regional, and all-India languages.<sup>3</sup> In countries like India where a large number of languages are spoken, various sorts of problems persist. For instance, India's national leaders had to confront several language problems in the first two decades of Independence and what appeared to some of them in the aftermath of Partition to be a real threat of the "balkanization" of the

country. These problems included the official language issue; demands for the linguistic reorganization of the provinces of India whose boundaries during British rule did not conform to linguistic divisions, and the status of minority languages within reorganized states. Most of the language conflicts in the Nehru period, some of which became at times bitter and violent, was ultimately resolved through pluralistic solutions.

In post-independent India, efforts have been made to provide equal recognition and opportunity to all including linguistic groups and their languages. Accordingly states in India are required to make sure (a) translation and publication of important rules, regulations, notices, etc., into all languages, which are spoken by at least 15% of the total population at district or sub-district level; (b) declaration of minority languages as second official language in districts where persons speaking such languages constitute at least 60% of the population; (c) Receipt of, and reply to, representations in minority languages; (d) instruction through mother tongues/ minority languages at the Primary stage of education; (e) instruction through minority languages at the Secondary stage of education; (f) linguistic minority pupils, and inter-school adjustments; (g) provision for text books and teachers in minority languages; (h) implementation of Three-language Formula; (i) no insistence upon knowledge of State's Official Language at the time of recruitment. Test of proficiency in the State's Official Language to be held before completion of probation (j) issue of Pamphlets in minority languages detailing safeguards available to linguistic minorities; and (k) setting up of proper machinery at the State and district levels. (Forty Second Report of National Commissioner Linguistic Minorities, July 2003 to June 2004)

Further, major regional languages are recognized as 'national' languages through their incorporation into the Eight Schedule of the Constitution. A listing on the Eighth Schedule carries symbolic and material advantages: a presumptive right to recognition as a minority language in states where other languages are dominant, including a presumptive right to recognition as medium of instruction in both primary and secondary education classes in such states, a right to the protection of the President of India (i.e. the central government) against discrimination in use of the language, and representation on language development committees appointed by the central government.

There are other Articles in the Constitution concerning the rights of linguistic minorities. Article 350A obliges every state and local authority 'to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups'. Article 20, 30, and 350, which refer to 'languages', confer broader rights upon linguistic minorities to preserve their 'distinct language, script or culture' (Article 20), 'to establish and administer educational institutions of their choice' (Article 30), and to submit representations for redress of grievances to any central or state authority in any language (Article

350). Again, the State shall not impose upon it any culture other than the community's own culture.

Further, as discussed earlier, in the regions where the strong base of popular support for language has been established the reorganization of the States on linguistic difference was considered.

#### **Special Representation: Anglo Indian Example**

Another important provision in the constitution that can be of our interest is that of Anglo-Indian community. The case of Anglo Indians is important as it talks about how Constitution is protective of our diversity. The Anglo-Indian community in its proper sense is a distinct (and statistically very small) minority community (0.00018%-0.00036% of the total population in India) originating in India, consisting of people of mixed British and Indian ancestry whose native language is English. An Anglo-Indian's British ancestry was usually bequeathed paternally (Article 366(2)).<sup>4</sup>

Besides these rights, the Anglo-Indian community is the only Indian community that has its own representatives nominated to the Lok Sabha (Lower House) in India's Parliament (Articles 331 and 333). The community is represented by two members. This is done because the community has no native state of its own. States like Andhra Pradesh, Tamil Nadu, Bihar and Kerala also have a nominated member each in their respective State Legislatures. A very interesting point is that this group is the only group in India, which gets political representation on the basis of distinct identity.

#### **Managing Regional Diversity**

There are regional groups to whom the differential treatments are extended on the basis of their underdevelopment or certain historical agreements. Examples of the first case may be that of special provisions with respect to certain regions in the state of Maharashtra and Gujarat. Article 371 of the Constitution clearly mentions that notwithstanding anything in the Constitution, the President may by order made with respect to (the State of Maharashtra or Gujarat), provide for any special responsibility of the Governor for the establishment of the separate Development Boards for Vidarbha, Marathwada (and the rest of Maharashtra, or as the case may be,) Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these Boards will be placed each year before State Legislative Assembly. There are provisions for the equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole. Similarly, there should be arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in service under the control of the State Government, in respect of all the said areas, subject to the requirements of the State as a whole. This can be best example of managing diversity with redistributive measures.

The second case of special consideration extended on the basis of historical agreements can be

exemplified by the instance of Jammu and Kashmir. The State of Jammu and Kashmir has been given special consideration under Article 370 of the Constitution. This is, however, temporary in nature.

#### **Managing Ethnic Differences**

When one talks about diversity and its management in India one cannot afford to miss the case of ethnic diversity in the Northeast which presents diverse forms of political dynamics. Sub-state movements, inter-ethnic conflicts and other forms of political tensions often surface in the region. Indian state has over the years produced distinctive forms of responses towards resolving these issues including creation of especial forms of political arrangements.

The reorganization of Assam and the border region, formerly called the North East Frontier Agency (NEFA), took place in stages and led to the formation of four new predominantly tribal states: Nagaland, granted statehood in 1963; Meghalaya formed as a separate state in 1972 for the Garo, Khasi, and Jaintia tribes; Arunachal Pradesh, the name given to NEFA, created as a Union Territory in 1971 and granted the status of a separate State in 1987. (Brass, 1994: 202)

Further, the Constitutional (27th Amendment) Act 1971 made special provision for the State of Manipur by inserting Article 371C empowering the President to constitute a committee of the legislative assembly of the State for the welfare of the Hill areas of the State of Manipur. (Hansaria, 2005: 24.) Thereafter many Amendments to the Constitution have been made to fulfill the demands of Tribal Areas of the region. The provisions of Sixth Schedule and Fifth Schedule have been applied to many states including Tripura (which was done under Constitution (49th Amendment) Act 1984). (Hansaria, 2005: 24.) Bodos, who have been demanding a separate Bodoland since 1987. After long drawn negotiation and series of meetings, a Bodo Accord was signed on 20th February, 1993 to provide maximum autonomy to the Bodos within the framework of the Constitution for their social, economic, educational and cultural advancement. (The Tribune, February 12, 2003)

Again, the federal status of Nagaland is governed by Article 371 (A) which provides cultural autonomy to the 'Nagas' of Nagaland. It protects 'religious or social practices of the Nagas', 'Naga customary law and procedure' and 'ownership and transfer of land and its resources'. The most interesting part of the Article is that this enables the Nagas to preserve and promote their culture without any interference from the Union. Article 371A (a) says that no act of Parliament in respect of (i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law, (iv) ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the legislative Assembly of Nagaland by a resolution so decides.

Article 371G speaks in the same tune for the state of Mizoram. According to it notwithstanding in this constitution, no Act of Parliament in respect of –

religious or social practices of the Mizos, Mizo customary law and procedure, administration of civil and criminal justice involving decisions according to Mizo customary law, ownership and transfer of land, shall apply to the state of Mizoram unless the legislative Assembly of the state of Mizoram by a resolution so decides. These are some instances, albeit limited cases, where customary laws are respected with strong protective measures supported by the Constitution of India. Foremost among these are the customary laws of the indigenous Naga and Mizo peoples of the Nagaland and the Mizoram states in North-east India.

#### **Conclusion**

India is a hugely fragmented political society; fragmented not only in terms of cultural values but also in terms of regions, landscapes and political aspirations of the people. Caste issues, linguistic problems, regional imbalance, issues of separatism or demands of territorial and cultural autonomy are just a few examples of the problems India faces. Though many of these issues are still looming large, India has developed policies which have successfully addressed many other socio-political issues. The perspective on equal citizenship provided by the Constitution is based on the understanding that equality between citizens can only be achieved with a fine mixture of liberal values and multicultural ethos. India has, thus, many such instruments that can strike a proper balance between individual and cultural needs. These instruments which exist in the form of Constitutional provisions and state's policies are amongst the major factors that help India sustaining her democracy.

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*The Tribune, "The New Bodo Accord", Editorial, Wednesday, February 12, 2003,*

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#### **Footnotes**

1. Article cited here, unless specifically mention, are from Bakshi (2002), *Constitution of India.*
2. See for more on 'matters of religion' Jain, Kagzi Mangal Chandra, *The Constitution of India, Ibid. pp. 791-92.*
3. *The Linguistic Survey of India, published in 1927, spoke of 179 languages and 544 dialects (and in all 1652 "mother tongues"), while the 1961 Census of India recorded speakers of 1018 different languages. For more details see Kothari, Rajni, Politics in India, Ibid. pp. 326-27.*
4. For more on Anglo Indians see Wright, R. Dean and Susan W. Wright, "The Anglo-Indian Community in Contemporary India". *Midwest Quarterly XII (Winter, 1971):175-185.*