

FEDERALISM OVER DEMOCRACY IN INDIA: DIALECTICS OF *DIVERSITY-CLAIMS* OVER *EQUALITY-CLAIMS*

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Indian federalism is considered globally as a success model of federalism in the non-Western and post-colonial contexts. As the world's most diverse country with some 1.3 billion people of many hundred languages, religions, aboriginal peoples, races, castes and communities, India has not experienced since 1947 any territorial disintegration although the country lives with manifold social, economic, cultural and religious conflicts. The role of federalism in India in holding together such a diverse country—somewhat risky since it is also a democratic country—has been laudable. The model of India's federation building (an unfinished project) from above, by an unending process of territorial re-sizing, has worked. The author argues in the article that in Indian federal democracy, federalism has been privileged over democracy in the sense of social and economic equalizing, (equality-claims) and democracy remains subordinated to the prior diversity-claims and only as a second order value. On the basis of a conceptual distinction that the author introduced before between diversity-claims and equality-claims, the author argues here that because of the preeminence of federalism (tuned to diversity-claims), India's performance on equality-claims remains abysmal accentuated in the wake of neo-liberal reforms.

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INTRODUCTION

Federalism's relation with democracy is contested. Although all successful federations are also democracies, democracy has fared differently in different federations. It is not enough for federalism to maintain a formal democratic façade; the question is the extent of democratic outcome that is produced in federations. The latter question relates to a set of functions that federalism ought to perform in the realm of redistributive justice. How much income is regenerated for the common citizens? Has federation or its units made much difference to the livelihood conditions of the vast majority? Has accommodation of diversity meant something more to the people than mere identity satisfaction? This article explores the above issues with detailed analysis of the relation between Indian federalism and democracy.

Part I seeks to present my argument in the global context which is: diversity-centric federalism serves well the needs for political order and stability but it may be short on producing more equality via performing a set of democratic functions in the substantive sense of the terms.

Part II examines the relation between diversity, federalism and nation-building and shows how diversity considered as a problem for long in the federations in the West came to recognized since the late nineteenth century, and considered as a resource in the post-colonial federations with the concomitant notion of nation-building. Part III reiterates my conceptual distinction between *diversity-claims* and *equality-claims* that I introduced in 2015 in order to conceptualize the relation between federalism and democracy in India. In this part, it is shown with detailed case materials from India how the *diversity-claims* have been privileged over *equality-claims* because the fulfillment of the former has guaranteed easier solution to the problem of political order and stability. The *equality-claims*, never committed and hardly met in any substantive sense, have played the second fiddle.

Part IV discusses the tensions between Indian federalism's new problematic (i.e., the excessive concern for diversity) and the democratic problematic. Part V analyses the constitutional arrangements of India for accommodation of diversity and the governing practices followed since 1950 at the Union and the State levels. Part VI provides further details on constitutional arrangements with special reference to tribal ethnic States in India's North East and shows how the Indian state shares its sovereignty with some of the tribal ethnic States such as Nagaland and Mizoram—all for the sake of diversity. Part VII assesses the impact of diversity accommodation on the *dalits* in India's most populous State of Uttar

Pradesh where political power has long been exercised by the representatives of the *dalits* (an identity groups) and shows that there is very little “trickle down effects” in terms of poverty reduction, income redistribution and other indicators of development and empowerment. The findings of this part suggest the democratic deficit in meeting the diversity-claims. Conclusion highlights how in India the problematics of diversity and the state have combined well at the cost of the democratic problematic which has been marginalized. With a brief reference to India’s neo-liberal reforms since 1991 it is commented that the space of *diversity-claims* is being squeezed and the prospect for *equality-claims* in the new era is bleak in a country where some 500 million people subsist on around US\$1 dollar a day.

I. ARGUMENT

Why are not all successful federations in the world as successful as democracies in the sense of producing more equality in society? Why are there large-scale and widening economic inequalities even in advanced federations which are also formally “successful” democracies? Why are there abysmal inequalities (which of late are growing!) in a “successful” democracy such as India? At today’s standards, accommodation of diversity for political unity, order and stability, (the so-called Hobbesian problematic, as it was) and avoidance of state crisis and “balkanization”, is considered as a mark of success of federalism, and very often utilized as also a success of democracy. In actual practice, however, these may not go together. That India is lauded in the existing writings on the subject¹ as the world’s largest democracy has much to do with the achievement of the India’s success as a federation and constitutional democracy. Democracy that has informed the existing knowledge on the subject is formal democracy, which is what Atul Kohli calls “procedural democracy” (2001), and Ramchandra Guha (2013) calls “hardware” of democracy (e.g., regular elections and other formal institutions and practices). The relatively successful accommodation of diversity in federalism in India is but the institutional responses to *categorical conflicts* over language, religion, tribal ethnicity, regional and sub-regional identity and other such identity markers. It may not be as effective in resolving *distributional conflicts*. Recent global level theoretical

¹ S. K. MITRA & V. B. SINGH, *DEMOCRACY AND SOCIAL CHANGE IN MODERN INDIA*, SAGE (1999); A. KOHLI ED., *THE SUCCESS OF INDIA’S DEMOCRACY* (Oxford University Press 2001); A. KOHLI, *DEMOCRACY AND DEVELOPMENT IN INDIA* (Oxford University Press 2010); S. KAVIRAJ, *THE ENCHANTMENT OF DEMOCRACY AND INDIA* (Permanent Black 2011); M. TUDOR, *THE PROMISE OF POWER* (Cambridge University Press 2013).

writings suggest that democracy is to be measured more importantly by the outcome, more particularly, by what democracy does, i.e. democracy's equality function. Adam Przeworski² says that one of the four challenges to democracy is its capacity to generate equality in the socio-economic realm. Democracy is not to be characterized as equality. But the question is of special importance, for Przeworski, for two reasons. First, the issue of socio-economic inequality infiltrates indispensably the political realm in an open political system. Second, democracies' equality performance in terms of generating more equality, in income, expenditure, and access to other social, economic and political goods is a cause for more legitimacy.³

Globally, however, there is no single route though to examining the effects of federation-building on democratic outcome, as we have defined above. The large scale economic inequality in the US may have very little to do with its federalism although some states in US South practiced slavery for a considerable period of time until the late 1860s.⁴ The federation-building here was organic, built from below, by a method of what Watts (2008) called "federation by aggregation", not to accommodate diversity because diversity accommodation was not the ground on which the world's first and longest lasting federation was built after 1789. Switzerland is very diverse and unequal in economic terms; there is also deeply rooted and widespread perception of inequality.⁵ But its diverse political institutions, paradoxically, serve to undercut strong demands for redistribution. In Europe, the post-War German federation is not known for its much skewed inequality; Germany is also not known for its diversity.

Therefore, it is seen from the above brief references to comparative cases is that there is no single model of how federalism is related to democracy, and the effect of their relationship on democracy or federalism. In other words, federalism per se may have very little to do with promoting more equality. Much depends on the policy orientation of the state(s). However, in the post-War and post-colonial federations, which were to be built on the basis of diversity and out of diversity suggests a different hypothesis. It is proposed here that federalism in multicultural societies has

² A. PRZEWORSKI, *DEMOCRACY AND THE LIMITS OF SELF-GOVERNEMNT* 1—2 & 66—98 (Cambridge University Press 2010).

³ This inequality has been increasing after 1982 including in Poland after the end of communist rule when there was an egalitarian redistribution of income 87 (Przeworski 2010).

⁴ J. STEINBERG, *WHY SWITZERLAND* (Cambridge University Press 1996); W. LINDER, *SWISS DEMOCRACY THE POSSIBLE SOLUTION TO CONFLICT IN MULTIETHNIC SOCIETIES* (Macmillan 1994); H. BHATTACHARYYA, *INDIA AS A MULTICULTURAL FEDERATION* (Institute of Federalism 2001); J. ERK, *EXPLAINING FEDERALISM* (Routledge 2010).

⁵ *See*, Steinberg 1996.

been over-concerned with the problem of political unity, order and stability so that democracy although conjoined to the federal project for acquiring, ostensibly, legitimacy, has been allowed to play only a second fiddle and relatively, suffer as a consequence. To put differently, although democratic problematic is different from the federal problematic, the former has been subsumed under the latter. The process has not been smooth because the open democratic polity, in the formal sense, and of longer duration, also opens up the possibility of greater mass participation in the political system which will inevitably demand more equality functions on the part of the state at different levels in a federal polity.

II. FEDERALISM, DIVERSITY AND NATION-BUILDING

Paradoxically enough, diversity as such did not find favour in much of federal thinking and scholarship from the days of the European Enlightenment until the last decades of the 20th century. On the contrary, monism in different guises remained, as it was, an underlying concern.⁶ The underlying the above concern seemed to be the compulsion of state building (read also nation-building) which indispensably entailed territorial unity, homogenization, order and stability. In the US case, for example, *The Federalist's* over-concern with the description of the US as the repository of “one nation”, or “one united people”, or the notion of federal government as a “pole of allegiance” was, arguably, evocative of embedded monism.⁷

Diversity was mostly seen as a “problem” in the European Enlightenment thought on federalism, whether of John Calhoun, J. S. Mill or J. Proudhon.⁸ The deep-rooted disdain for diversity and plurality remained in federal thinking during the first half of the 20th century. In the post-Second World War period the consensus was that the ethno cultural identities would disappear in the institutional engineering of the “complete nation-state”⁹. It is thus no wonder that in K. C. Wheare’s classic statement on the “federal principle”, diversity or plurality apparently found little place: By the federal principle, I mean the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and

⁶ D. KARMIS & W. NORMAN, THEORIES OF FEDERALISM 3—23 (Palgrave 2005).

⁷ Alex de Tocqueville (*Democracy in America*) had, however, noted the inconsistency between federalism and popular sovereignty in the case of US federalism. Intrigued by what he called “the rules of logic” being “bent”. Tocqueville wrote: The lawgivers adopted a middle path which forcibly reconciled two theoretically irreconcilable systems.....The principle of state independence prevailed in the shaping of the Senate, the dogma of national sovereignty in the composition of the House of Representatives (*Democracy in America*, Vol. 1 eds. Meyer and Lerner 1966: 140).

⁸ Karmis and Norman 2005: 11.

⁹ Karmis and Norman 2005: 12.

independent.¹⁰ He did refer to the value of diversity, and sought to mean federalism as a way of reconciling the pressures for diversity and unity, a deep-seated monism for unity did stay on in his understanding.¹¹ To take a short recourse to history, the Swiss, who founded their modern federation in 1848 (as a lone case in 19th-century Europe), showed the way in the first major revision of their Constitution in 1874 in maintenance and promotion of diversity as the primary goal of the federation, and that diversity was no longer a problem of nationhood.¹² In the last constitutional revision in 2000, four languages—German, French, Italian, and Romancsh—were accepted as the national languages of the Swiss people.¹³ The theoretical import of Swiss innovation for nationhood in this regard need some stressing because it is this nationhood, or nation-ness question, and that too, in multicultural societies, that remained most perplexing to nation- and state builders in federal democracies in the post-colonial countries.

Historically, with the decks somewhat cleared by the Swiss, diversity became a rallying-point in federal designs and the institutional arrangements of many post-colonial countries including India with varying degrees of success and a record of grotesque failures¹⁴. In the global literature, it was only since the last decades of the last century that diversity—particularity, identity issues, minority cultures, collective rights, locality and regions and so on—came to be recognized. Following Elazar's famous epithet, a new definition of federalism as a compound polity that combines shared-rule (general, common purposes) with self-rule (for the regions)¹⁵ gained considerable currency although the original meaning of federalism had very little to do with diversity. Even going beyond the territorially rooted diversity that federalism thus far addressed to, with the successive constitutional reforms in Belgium since 1970 through 1993, non-territorial diversity also came to be recognized for the purpose of powers and

¹⁰ Interestingly, the term “democracy” did not occur even for once in the indexes of Wheare's classic book, *Federal Government* (1953/1946: 11).

¹¹ He did emphasize the (democratic) similarity of political institutions for the sake of federalism. He was very happy to note that the Swiss when they had converted their Confederation (1291) into a modern federation in 1848 were successful in brining “into line” the great divergence of political institutions (Wheare 1953: 46).

¹² One of the basic purposes of the Swiss federation as per the Constitution of 1874 was to uphold “unity, strength and honor of the Swiss nation” (quoted in Bhattacharyya 2001, 356).

¹³ The Preamble to the new Swiss Constitution (2000) mentions that “We, the Swiss People and Cantons....” and under Article 4 declares all four languages of the federation—German, French, Italian and Romancsh—as national languages.

¹⁴ R. L. WATTS, *NEW FEDERATIONS* (The Clarendon Press 1966); H. BHATTACHARYYA, *FEDERALISM IN ASIA* (Routledge 2010).

¹⁵ R. L. WATTS, *COMPARING FEDERAL SYSTEMS* (The Queen's McGill 2008).

autonomy.¹⁶ congruence hypothesis” also took cognizance of the ethno-linguistic and social structure in this regard.

It is no wonder that this recognition of diversity, an unavoidable social reality in most multi-ethnic countries in the post-colonial world, attracted the attention of state (and nation) builders. Jawaharlal Nehru, India’s top nationalist leader and first Prime Minister (1947-1964), as a representative of the post-colonial generation of political leaders, wrote, therefore:

The diversity of India is tremendous; it is obvious. It lies on the surface and anybody can see it. It concerns itself with the physical appearances as well as with certain mental habits and traits....Yet, with all these differences, there is no mistaking the impress of India on the Pathans, as this is obvious on the Tamils. The Pathans and the Tamils are two extreme examples; others lie somewhere in between. ...It is fascinating to see how the Bengalis, the Marathas, the Gujeratis, the Tamils, the Andhras, the Oriyas, the Assamese...have retained their peculiar characteristics for hundreds of years, have still more or less the same virtues and failings of which old tradition or record tells us, yet have been throughout these ages distinctively Indian with the national heritage and the same sense of moral and mental qualities.¹⁷

Nehru’s valorization of the various ethno-national groups above is done so with the central theme of unity, or one Indian nation nonetheless.

Consider the following passage from Nehru which could be read in conjunction with the above:

Some kind of a *dream of unity* occupied the minds of Indians since the dawn of civilization. That unit was not conceived something imposed from outside....It was something deeper and within its fold, the widest tolerance of beliefs and customs was practiced and every variety acknowledged and encouraged.¹⁸

Among others Nehru’s writings above suggest that diversity and variety are not problems standing in the way of achieving or cohering nationhood in multicultural contexts. (Bhattacharyya 2011a and 2011 b).

III. EQUALITY-CLAIMS AND DIVERSITY-CLAIMS

Since the author has discussed at length on his conceptual distinction between the *equality-claims* and the *diversity-claims* (Bhattacharyya 2015b), he will only reiterate it in order to capture the inherent tensions between federalism and democracy in Indian constitutional democracy, and also to strengthen the theoretical argument for understanding Indian federalism in

¹⁶ Watts 2008: 43-45; Erk 2010.

¹⁷ Nehru 1980/1946: 61—62.

¹⁸ J. NEHRU, THE DISCOVERY OF INDIA 62 (Oxford University Press 1980/1946) [emphasis added].

comparative perspective. To begin with, neither diversity nor equality per se makes sense until and unless it is articulated and demanded. All aspects of diversity may not be relevant to federalism; if we wear as a community in a different dress style, or have a different food habit, it cannot be claimed for a federal solution. Language right, for example, is recognized, but all language issues did not require a federal solution. Many 8th Schedule languages (in the Indian Constitution) (22 at present) are not territorially so rooted as to demand some kind of Statehood status. Sanskrit, Santhali and Urdu are cases in point. Nonetheless, since the beginning of the Republic (1950), language, and other ethnic issues have received an unusually privileged attention from the rulers for the sake of unity and integrity, for state building, and for ensuring political order and stability. Again, demanding equality or accommodation of diversity does not mean anything unless their concrete components are identified for political mobilization, or for redress. *Diversity-claims* refer to the claims for recognition of identity: ethnic, or ethno-regional; religious; linguistic; tribal (aboriginals); regional and sub-regional and so on. This recognition entails conceding territorial autonomy in the form of Statehood and sub-Statehood within the federation; special rights and protection of the locality (sons of the soil); various group rights to be constitutionally recognized and guaranteed; right to culture and script; and so on. As we will see soon below, the Indian Constitution provides for a wide range of general and special arrangements for accommodating various *diversity-claims*. The literature of Indian federalism and federation building¹⁹ show that federation building in India and the fulfillment of *diversity-claims* have gone hand-in-glove. In 1956, for example, in the first ever major sweep, some 16 new States were created mostly on the basis of the recognition of ethno-linguistic *diversity-claims* such as Kerala (Malayalam language and Malayali identity); Andhra Pradesh (Telugu identity); Tamil Nadu (Tamil identity); Maharashtra (Marathi identity); Gujarat (Gujrati identity); and in 1966 Punjab (Sikh identity). The process was carried forward in the early 1970s (India's North East); in the 1980s (Goa, Arunachal Pradesh and Mizoram); in 2000, Chhattisgarh, Jharkhand and Uttarakhand; and in 2014, Telangana. (Bhattacharyya et al. 2017). The Article 3 of the Indian constitution facilitates the process by nearly unilaterally empowering the Union

¹⁹ Watts 1966; Bhattacharyya 2001; Bhattacharyya, *Indian Federalism and Democracy: The Growing Salience of Diversity-Claims over Equality-Claims in Comparative and Indian Perspective*, 25(3) REGIONAL AND FEDERAL STUDIES 211—227 (2015); and (Jointly), *Indian Federalism at the Crossroads: The Limits of Territorial Management of Ethnic Conflict*, 16 (1) INDIA REVIEW (USA) special issue on Indian Federalism titled *Continuity and Change in Indian Federalism* 149—178 (2017).

government to make the necessary territorial revisions. It says:

Parliament may be law:

a. Form a new State by separation of territory from any State, or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

b. Increase the area of any State;

c. Diminish the area of any State;

d. Alter the boundary of any State; and

e. Alter the name of any State²⁰. On the face of it, the provisions under Article 3, as above, are most anti-federal especially when seen from a federal purist perspective. But in the specific Indian context, they have proved to be most federal in right-sizing the centralized post-colonial state left by the departing rulers in accommodating ethnic diversity. The reorganization of Indian territory after independence on into a federation on the basis of “linguistic provinces” was part of the nationalist (INC) pledge to the people, and such claims remained alive in the Indian anti-colonial nationalist movement since the early 1920s. After independence the popular movements for linguistic provinces grew in different parts of India to which the new Indian rulers could remain hardly oblivious. In Andhra regions in the erstwhile Madras Presidency, the movement for the linguistic province of Andhra led to the fast-unto-death of a famous Gandhian leader, Potti Sriramalu.²¹ Conceding statehood was nothing but meeting the diversity-claims, and it was relatively easier to concede than to commit redistributive public policies, i.e. *equality-claims*. The regions of India where ethno regional movements were once very strong and violent for statehood came out relatively peaceful with durable ethnic peace and political order. In India’s North East, known for long as the “insurgent country”, statehood has significantly helped to reduce ethnic conflict. In this region, Mizoram, a tribal ethnic State, is today most peaceful, which has to do a lot with grater consolidation of tribal identity and statehood.

Equality-claims refer to the claims for various equality provisions and public policies for the individual citizens: formal political equality (right to vote and to stand for election), and civil rights as well as redistributive social and economic rights: land to the landless; work; income; housing; health; guaranteed employment; social security; education and so on. In the Constitution of India, the scope for making *equality-claims* has remained very limited; those that were provided for were placed in the otherwise unimportant part of the Constitution—Part IV of the Constitution tilted

²⁰ P. M. BAKSHI, THE CONSTITUTION OF INDIA 8 (Lexis-Nexis, 2017), 14th edn.

²¹ Bhattacharyya et al. 2017.

Directive Principles of State Policy as distinguished from Part III that contains various fundamental rights enforceable in the court of law. It is only since the 1980s and that too, due mostly to various PIL judgments of the Supreme Court, that items in Part IV of the Constitution have assumed some importance. As pointed out by Baxi²², due to the social action litigation judgment of the Supreme Court of India, a group of “basic rights”, or fundamental rights have been created which include: right to dignity; livelihood; compensation and rehabilitation; speedy trial; health, gender equality and environment. But then it is too late in the day. If a polity is less oriented to *equality-claims*, its policy performance on the distributional realm is less likely to be satisfactory. In fact, the miserable policy performance on the latter score may turn out to be a stigma on the federal, or formally democratic success. The rising global inequalities²³ provoke much food for thought among the stake holders for paying greater attention to *distributional concerns*. (UNDP 2011) There is here one lesson or two to be learned. Amartya Sen²⁴ India’s Noel laureate economist, very rightly argues that even the “equity of recognition” (pertaining to *diversity-claims*) when separated from other priorities and objectives, does not advance the cause of equality or distributive justice.²⁵

IV. FEDERALISM’S NEW PROBLEMATIC VIS-À-VIS DEMOCRATIC PROBLEMATIC

Federalism’s new problematic is diversity-centric within the overriding objective of political order. Nation- and state-building issues are the underlying themes of any federation in the post-colonial contexts. In the very recent times, federalism has turned a little identity-centric too, but then, that is part of the same problematic of political order and stability. In complex multiethnic countries such as India, such issues are highly privileged over the democratic outcome, or egalitarian concerns of a democratic state. Identity recognition and autonomy in favour of identity groups in a federation may perform a democratic function, viz., recognition of collective/group/community identity, but that does not *per se* guarantee any egalitarian function, or redistributive outcome, in the socio-economic realm.

Democratic problematic, by contrast, is centred on equality, or

²² Baxi (1998): 335—52.

²³ J. PIKETTY, CAPITALISM IN THE TWENTY-FIRST CENTURY (Harvard University Press 2014).

²⁴ A. SEN, THE ARGUMENTATIVE INDIAN 35 (Penguin 2005).

²⁵ Massive and growing inequalities the world over has remained a central concern in the writings of Sen.

egalitarian redistribution in the socio-economic realm. In the recent standard texts on democracy²⁶ are more concerned about the formal institutional aspects of democracy with the embedded assumption of democracy as *political equality*. But democracy's many disappointing outcomes have not been overlooked by Shapiro and Hacker-Cordon²⁷ (1999: 1).

Usually, democratic participation is fleeting, accountability is little more than nominal, and the true meaning of "democratic decisions" is obscure.

In the current writings on democracy, globally speaking, Adam Przeworski²⁸ has most of all raised the question of democracy's relation to social and economic equality although he finds the scenario rather pessimistic even on the basis of global level surveys. Going beyond the political equality-centric meaning of democracy, as most liberal theorists have done and continue to do²⁹ his first "theorem" of democracy asks the question if representatives chosen freely will take political decisions which results in redistribution of incomes on an egalitarian basis.³⁰ His critical survey of the issues involved does suggest, negatively though, that although democracy and capitalism are incompatible, the "private ownership of capital limits the range of outcomes that can ensue from the democratic process".³¹ In his subsequent writing appropriately titled *Democracy and the Limits of Self-Government* (2010), he has considered the equality outcomes as a major challenge to democracy. Any discussion on the equality-centric democratic problematic will remain incomplete without reference to how Alex de Tocqueville confronted the issue of equality because there was a novelty in the ways equality's relation with democracy is viewed by him. For him, "equality, the characteristics of the new social state," is an "infinitely active principle, disrupting all aspects of social and political life, all aspects of human life. This new equality is not a state, it is a process—'growing equality of conditions'—whose outcome is very difficult to

²⁶ For example, J. DUNN, ED. *DEMOCRACY: AN UNFINISHED JOURNEY* (Cambridge University Press 1992).

²⁷ I. SCHAPIRO & H. HACKER-GORDON, EDS. *DEMOCRACY'S VALUES* (Cambridge University Press).

²⁸ A. Przeworski (2010).

²⁹ J. S. MILL, *THE REPRESENTATIVE GOVERNMENT* (Basil Blackwell 1864); J. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* (Unwin University Book 1942); K. POPPER, *THE OPEN SOCIETY AND ITS ENEMIES* (Routledge and Kegan Paul 1962); R. DAHL, *POLYARCHY, PARTICIPATION AND OPPOSITION* (Yale University Press 1971); N. BOBBIO, *THE FUTURE OF DEMOCRACY* (The University of Minneapolis Press 1984).

³⁰ A. Przeworski, *Minimalist Conception of Democracy: A Defense* in Schapiro and Hacker-Gordon eds. 23 (1999).

³¹ Przeworski 1999: 41.

predict.”³² While examining the peculiar American conditions where individuals are born equal rather than intended to become, and where the political institutions are designed to reflect this social state, Tocqueville argued that the principle of “equality of conditions” was a creative principle.³³ The possible instrumental lesson one can draw from this idea of democracy qua “equality of conditions” is that the latter could be utilized by the appropriate political institutions that can help minimize injustice rather than establishing a just order, or a state of absolute justice, by following what Amartya Sen called, in a critical spirit, “transcendental institutionalism”.³⁴ Sen favored instead what he called “realization-focus” or policy-driven approach, which is but a transformation approach.

V. INDIAN CASE: CONSTITUTIONAL ARRANGEMENTS AND GOVERNING PRACTICES

The Indian Constitution (1950)³⁵ does contain provisions for a host of rights as fundamental (Articles 19-32) (which includes a host of civil and political rights, cultural and minority rights, language rights, the right to religion and so on) though hedged around with limitations (all emanating from the *state's problematic*)³⁶. Beyond the above provisions for *diversity-claims*, the 5th and the 6th Schedules of the Constitution provides for autonomous district councils for self-government for the indigenous, aboriginal peoples (known as tribes in India) in areas outside of North-East and in North-East respectively. The criterion of introduction of such rule is the tribal ethnicity of the people inhabiting a particular area. This Schedule (Arts 244 (2) and 275 (1) assigns autonomous powers to the Autonomous District Council (ADCs) in the tribal inhabited areas in India's North East that includes legislative powers (subject to the assent of the State Governor) on allotment and occupation, or use of land; management of any canal or water course for agriculture; regulation of *jhum* (shifting) cultivation; establishment of village council/committees; appointment of Tribal chiefs or his successors; inheritance of property; marriage and social customs³⁷. This

³² Manent 1995/1987: 103.

³³ P. MANENT, AN INTELLECTUAL HISTORY OF LIBERALISM 104 (Princeton University Press 1995/1987).

³⁴ A. SEN, THE IDEA OF JUSTICE 4—10 (Penguin 2009).

³⁵ The pre-independence developments and half-hearted and unsuccessful experiments with federalism in British India have been adequately explored and examined. See, for example, Bhattacharyya (2010) chapter 2, 20—45.

³⁶ That is, they are called not “state-free spaces” (See, Baxi in Mohanty et al. eds. People's Rights 335—352 (Sage Publications 1998).

³⁷ Bakshi 425-3 (2017).

Schedule also prescribes limits to the power of Indian Parliament, or the State Legislature on the ADCs. The 6th Schedule, however, is more empowering the tribes than the 5th Schedule. In the North-East of India with a large concentration of tribes, the 6th Schedule has been routinely demanded and introduced, and has served as an effective territorial response to ethnic conflicts in this militancy prone region of India. The Autonomous District Councils which dot North East are like States within a State. Added to the above are further asymmetric arrangements within Indian federalism that provide for Special Category State status to backward States needing additional central government support. Until 2015 there were some 11 such States including Jammu & Kashmir, and all the seven states in North-East which have received the Planning Commission (abolished in 2015) disbursement of 70% as Grants and only 10% as loans while the general category States got 90% as loan and 10% as Grants.

VI. SPECIAL RIGHTS TO TRIBAL STATES

Indian federalism is very complex; it is multi-tiered, for beyond the States there are sub-State units which enjoy autonomous powers, as mentioned above. Even among the States, some are more equal than others. Consider the case of the federation's first tribal ethnic State of Nagaland created in 1963. Article 371-A states: Notwithstanding anything contained in this Constitution: No act of Parliament in respect of:

- a. Religious or social practices of the Nagas;
- b. Naga customary law and procedure;
- c. Administration of civil and criminal justice involving decisions according to Naga customary law;
- d. 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.³⁸ This is a good example of not only sharing sovereignty with the Nagas by the Indian state but also the extent of accommodating *diversity-claims*.

The founding fathers of the Constitution of India were rather over-sensitive to the diversity-claims to the relative neglect of equality-claims. We will cite here one example among so many from the debates in the Constituent Assembly (CA) on the issue of *preferential treatment for the sons of the soil* (under the constitutional language of “residential requirements”) regarding employment and so on. Dr B. R. Ambedkar, the Chairman of the Drafting Committee of the Constitution, seemed to have

³⁸ Bakhi 2017: 391.

had the final say. He said that while he was aware that the residential requirements deviated from the value of equality and common citizenship, he urged the CA to recognize the practical reality:

At the same time [...] you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, [...] just to come, apply for posts and so to say take the plumb and walk away.³⁹

The above was to be read in conjunction with the historical transactions of the INC with various ethnic entitlements since its formation way back in 1885, and the defence of the *diversity-claims* by the party ever since.⁴⁰ Consider how the constitutional provisions for “equality of opportunity” (Art. 16) have been compromised with those of Article 16 (3):

Article 16: No citizen shall, on ground only of religion, race, caste, sex, place of birth, residence or any one of them, be ineligible for or discriminated against in respect of any employment or office under the State.

Article 16 (3): Nothing in this Article shall prevent the Parliament from making any law prescribing, in regard to a class or class of employment or any appointment to any office.....within a State or a Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment.

It has been explored, in detail, by Bhattacharyya⁴¹, since 1950 India’s governing practices are replete with legislations, cabinet decisions, government circulars, directives to employers including the private ones and other policy prescriptions adopted by both the Union and the State levels that have defended *diversity-claims* of various kinds. No less a person than the then Prime Minister (late) Indira Gandhi asserted in *Lok Sabha* (popular chamber of Indian Parliament) on December 13, 1972 in defense of preferential policies:

While we stand for the principle that any Indian citizen be able to work in any part of India, at the same time, it is true that if a large number of people come from *outside* to seek employment...that is bound to create tension in that area. Therefore, while I do not like the idea of having any such rule, one has to have some balance and see that the local people are not

³⁹ Weiner and Katzenstein 1981: 24.

⁴⁰ Harihar Bhattacharyya, *Ethnic and Civic Nationhood in India: Concept, History, Institutional Innovation and Contemporary Challenges*, in *ETHNICITY AND SOCIO-POLITICAL CHANGE IN AFRICA AND OTHER DEVELOPING COUNTRIES: A CONSTRUCTIVE DISCOURSE IN STATE BUILDING* 169—195 (Saha, S. C. ed., Lanham, USA: Lexington Books 2008).

⁴¹ Bhattacharyya 2012: 23—41.

deprived of employment.⁴² Various State governments followed suit *ad infinitum*. Apart from making reservations for the Scheduled Caste, Scheduled Tribes and the Other Backward Classes (OBC), preferential policies for the local people have also been pursued. Consider another example from the State of Karnataka in 1982:

It is the desire of the State government that to the maximum extent possible preference should be given to local persons in the matter of appointment in the state public sector undertaking.⁴³

It is seen clearly how equal citizenship rights have been subjugated to the *diversity-claims* at both union and state levels. Baruah⁴⁴ has found the situation in India's North-East as appalling in this regard. He says that in Meghalaya, nearly 85% of public employment is reserved for the *Khasis* (ST) (dominant tribe); as many as 55 out of 60 seats in the Legislative Assembly are reserved for them.⁴⁵ His argument is that the "protective discrimination regime" (rather than an egalitarian one) there is elaborate in this regime.⁴⁶

VII. IMPACT OF DIVERSITY-CLAIMS

Needless to point out, in India's constitutional democracy *diversity-claims* occupy greater space and enjoy pre-eminence. *Equality-claims*, conceptually, which have stronger links with *democratic intention*⁴⁷ occupy a secondary place, and are of second order value in India's constitutional democracy. It must also be pointed out here that fulfilment of *diversity-claims* serve to meet some equality-claims, especially of "equal" identity. But then the significance of the latter pales into insignificance in the face of elite control over the largesse: the dominant groups who eke out a political space in the name some *diversity-elements* very often make sure that the "trickle down effects" are of very limited import. For example, one can cite the most appropriate case of the democratic effects on the *dalits* in Uttar Pradesh (U.P), India's most populous and one of the most backward States,

⁴² M. WEINER & M. KATZENSTEIN, *INDIA'S PREFERENTIAL POLICIES* 25—26 (Chicago University Press 1981). [emphasis added].

⁴³ H. Bhattacharyya, "A Nation of Citizens" in a *Fragmented Society?*, in H. Bhattacharyya et al. eds. *THE POLITICS OF CITIZENSHIP IDENTITY AND THE STATE IN SOUTH ASIA* 36 (Sanskriti 2012).

⁴⁴ S. BARUAH, *DURABLE DISORDER; UNDERSTANDING POLITICS IN NORTH EAST INDIA* (Oxford University Press 2005).

⁴⁵ Baruah 2005: 133.

⁴⁶ No wonder, he has a made a distinction between what he calls "citizens" and "denizens" in respect of the North-East. The proliferation of ethnic homeland demands in the region has also been quite logical.

⁴⁷ Bhattacharyya et al. 2017.

during the period of a regime led by Ms Mayawati, the *dalit* Chief Minister. Her party, the Bahujan Samaj Party (BSP), ruled U.P between 1993 and 2012. The SC population, the major component of the *dalit* people is 21.1% of the total population of whom 87% are rural. As far as “work participation” rate was concerned it was found out that only 34.7% reported positive in 2001.⁴⁸ Second, in terms of poverty line, the improvement was very limited: 49% of SCs was below the poverty line in 1987 which went down to 46 per cent in 2005.⁴⁹ We would like also to provide some UNDP data on Human Development Index here to buttress further our argument: of 19 States of India, U. P’s ranking was 15, and in the Global Hunger Index, U. P rank was 9 out of 17 States.⁵⁰ As far as the States are concerned, the UNDP’s estimates show that most States⁵¹ except Kerala lose average value in inequality measurement higher than the all India average. In terms of the global performance standards, India ranks in the “Medium Human Development Category”; its federal units except Kerala mostly fall short of that.⁵² These are evidences which support our contention that the *diversity-claims* are inherently deficient in equality performance and democratic outcome.

When placed in relation to the successes of India’s federalism, India’s abysmal performance on redistributive realm is conspicuous. In the Global Slavery Index India’s rank is five (with as much as about 14 million plus people), and the governmental response has been poor.⁵³ The relative success of *diversity-claims* may entail limited egalitarian and hence democratic function in terms of social identity in a hierarchical society of castes. The available research on aspects of *diversity-claims* via positive discrimination⁵⁴ is doubtful of the *equality-generating* effects of *diversity-*

⁴⁸ *Census Report of India* 2001.

⁴⁹ During the same period, the all India performance was better: 38% in 29%. Sachar Committee 2006: 367). Sachar Committee Report, Government of India 2006: 367.

⁵⁰ www.in.indp/content/dam/india/docs/UttarPradeshfactsheet.pdf (accessed 30. 8. 17).

⁵¹ The UNDP Report (2011) states that the loss of value in HDI due to inequality in education is more than the national average (43%) in such States as Karnataka, Haryana, Chhatisgarh, Uttarakhand, Andhra Pradesh, Bihar, Madhya Pradesh, Jharkhand, Rajasthan and Uttar Pradesh—the States which came out as a result of the fulfillment of *diversity-claims* since 1953. (UNDP Report 2011: 10).

⁵² The other studies on the subject focusing on the period since the early 1990s (when India embraced the Reform process) strongly suggest that inequalities of varied sorts have since increased (See Pal and Ghosh. 2007; F. Frankel, 205; Nayar, D. ed. 2007; and Tendulkar and Bhawai 2007). See, also UNDP 2011: 11—13).

⁵³ *The Frontline* February 2015 “Data Card”, 122—123.

⁵⁴ L. TILLIN, REMAPPING INDIA: POLITICAL ORIGINS OF INDIA’S NEW STATES (Oxford University Press, 2014; Bhattacharyya 2001 & 2010; S. PAI & A. SARANGI, EDS. INTERROGATING STATES REORGANIZATION IN INDIA (Routledge 2011); K. ADENEY, CONFLICT REGULATION IN INDIA AND PAKISTAN (Palgrave 2007); J. MCGARRY & B. O’LEARY, EDS. THE POLITICS OF ETHNIC CONFLICT REGULATION (Macmillan 1993).

claims because in the case of federation-building by way of conceding to statehood, some dominant caste or tribal groups and classes in most cases have benefited at the expense of the vast majority⁵⁵; and in the case of positive discrimination, while it served to satisfy identity needs to some extent, the impact has also not been as effective for equality-generation because the benefits, which are limited in any way, are reaped by a few at the top of such sections.

CONCLUSION

In conclusion, the author seeks to highlight that in Indian constitutional democracy, three problematics⁵⁶—of the state, of federalism and of democracy—have been at playing in a way that while the problematics of the state and of federalism have combined well for the sake of political order and stability via the route of a very flexible approach to accommodating *diversity-claims* but the democratic problematic has been marginalized. This aspect has remained neglected in the scholarship on Indian democracy and Indian federalism. The outstanding democratic scholarship in India has neglected this and failed to explain why Indian democracy has failed to produce significant equality outcome. This article does not argue against *diversity-claims*, but seeks to explain that over-emphasis on diversity accommodation has upset redistributive changes (*equality-claims*) in India. *Diversity-claims* in any federations are unavoidable in multiethnic societies; they are to be recognized appropriately. But such recognition must not be delinked for distributional issues. The lack of a fine balancing between the two may pave the basis for persistent ethnic conflicts in such societies. Thus, self-government as meeting the *diversity-claims* for some ethnic groups may not by itself be enough; it ought to be backed by the appropriate redistributive concerns.

Finally, with India's shift to free market economy since the early 1990s Indian federal democracy is confronting an evolving but contradictory reality: a relatively long sustaining democratic facade with limited genuine democratic orientations but faced with a highly mobilized society (along many ethnic fault lines) has witnessed a democratic pressures from below demanding expansion of the ambit of democracy—evident in demands for greater decentralization and participation; smaller territorial units for

⁵⁵ Nehru's cynicism about the linguistic provinces, as Robert King, *Nehru's Language Policies* (Oxford University Press 1997) pointed out, was therefore not very surprising.

⁵⁶ H. Bhattacharyya, *Debating Democracy in India: Emancipating the Discourse*, in L. LOBO & SHAH, J. EDS. *DEMOCRACY IN INDIA CURRENT DEBATES AND EMERGING CHALLENGES* 56—71 (Primus 2017).

recognition and development; more institutional guarantees for protection of rights of the socially underprivileged; and the greater actual participation of the thus underprivileged sections in the institutional political process. The above has been taking place at a time when Indian democracy has since the early 1990s been confronting the real possibilities of greater corporate control over democracy in the wake of “reforms” so that observers of Indian economy and politics have expressed grave concern about the very foundations of the democratic system because now the Indian state tends to be more accountable to the “invisible sentiments of the market”⁵⁷ than the more visible problems of its poverty-stricken people⁵⁸ argued how the new corporate capital of India (Indian and foreign) had since the 1990s been appropriating what he called “political society” via Indian electoral democracy conceding in the end only a left-handed compliments (some benefits) to the inhabitants of political society, that is, rural and urban poor, in order to assuage the injured feelings of the people born of what he called “primitive accumulation of capital”. While the greater intellectual attention to the *equality-claims*⁵⁹ is called for, there is a lesson for the stakeholders in *diversity-claims* that they are unlikely to have the same leverage as before when the macroeconomic policies have shifted significantly from social welfare to market freedom. Atul Kohli (2012) argues that in India as much as 450 million people subsist on less than US\$1.25 a day; nearly half of all the children are malnourished; and the “new alliance” in power has prioritized economic growth over poverty alleviation; and the resultant inequalities limit the impact of growth on poverty alleviation, and large-scale exclusion. That certainly is a bad omen for a vast multi-ethnic federal democracy with potentialities for renewed regional and ethnic tensions and conflicts.

⁵⁷ S. Raghavendra, *Economic, Politics and Democracy in Credit Rating Capitalism in India*, 48(5) ECONOMIC AND POLITICAL WEEKLY 34—38 (2013).

⁵⁸ Partha Chatterjee, *Democracy and Economic Transformation in India*, *Economic and Political Weekly*, 53—62 (April 19, 2008).

⁵⁹ The renewed ethnic and class conflicts are being surfaced all over the country; renewed inter-regional disparity is officially recognized; the new distinction between “forward States” and “backward States” is being advanced by scholars. Ironically, 147 districts out of 250 in 27 out of 28 States have been officially declared as “backward” by both the NDA and the UPA-1 & 2 governments at the Union (See Bhattacharyya 2012: 26-38 for further details).