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Based on its constitutional and institutional setup, could India be rightly conceived as a 'consociational' (power sharing) democracy?

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A consociational democracy is a model of governance that uses power sharing to cope with societal divisions. Lijphart (1996: 258) outlined four crucial, interdependent elements, which characterise consociationalism: "Grand Coalition" governments in which members of all significant linguistic and religious minorities are represented, cultural autonomy for minorities groups, proportional political representation and an effective minority veto. India's characterisation as a consociational democracy has been both convincingly reinforced and criticised. Much of this analysis, however, focuses too much on contingent political realities rather than entrenched and effective institutional pillars from which they in part derive. Using Lijphart's (1996) understanding of consociational, this paper demonstrates that while India's political system runs on the basis of an informal consociationalism, relying on the inclusive Congress Party, India's constitution fails to adhere to any of the principles of consociationalism effectively. This is because the drafters of the Indian constitution integrated the contradictions and debates in society, such as the divide between Hindu majoritarianism and the consociationalism of the minority groups and the Congress Party into the Indian institutional structure and constitutional law. This, however, has resulted in the majoritarian tenets in the constitution such as the first-past-the-post- electoral system undermining its more consociational elements. Furthermore by favouring regionally concentrated ethno-linguistic groups, the system allows consociational benefits to regional majorities failing to protect regional minorities, which include thinly dispersed national minorities. This ambiguous, unbalanced constitutional combination of majoritarianism and consociationalism is ineffective, hindering the

establishment of comprehensive consociationalism in the country.

It is necessary, firstly, to outline the purpose of consociationalism and how it relates to the democratic process in India. Consociationalism aims to mitigate conflicts in 'deeply divided societies', defined by Lerner as when divisions are founded on irreconcilable visions of the state (Lerner 2010: 70). Constitutions are vital tools in the achievement of this because as an expression of 'who belongs' and as the basis of a state's distribution of power and liberty, they can facilitate or fuel the prevalent divisions within society. The divisions in India are multi-faceted, compartmentalising the country on different levels along lines of religion, language, geography, caste and ethnicity. These divisions are broadly characterised by one political schism, that is, between Hindu majoritarianism and consociationalism. The framers of the 1949 Indian constitution adopted an incrementalist approach to constitution writing and chose to import this conflict into the constitution through institutional ambiguity and contradictions seen, for example, in the establishment of an unenforceable Uniform Civil Code (Lerner 2010: 76). By doing this they transferred decisions to future political realms in an India with a more certain, consolidated identity, which they thought may be better placed to make decisions on issues of national identity. According to consociational theory, a democracy with such schisms can only survive according to its model (Lijphart 1996: 258). Yet, as much as a deeply divided democracy relies on consociationalism, consociationalism also relies on democracy to function. For instance, the tools of consociationalism such as proportionality representation are inherently democratic. Moreover, cultural autonomy and a minority veto are predicated on the existence of a federal, democratic mechanism to articulate concerns and reject proposals.

The criterion of proportionality in representation and government employment is the most fundamental measure of consociationalism as it directly enforces power sharing. The Indian Constitution, however, is at most ambivalently supportive of proportionality as it fails to acknowledge and act according to the multifaceted nature of the 'Indian' identity and it is consequently inconsistently implemented. An example is Article 330 that allows for positive discrimination in favour of lower castes in the form of proportional reservations in political representation and government appointments. This article is deeply consociational, giving less privileged segments of society proportional representation and power. Yet, the "colour blind" Constitution is oblivious to the fundamental religious divide between Hindus and Muslims and the minority status

of the latter. The lack of reservations for Muslims has left them with a significantly lower presence in government and civil services than the principle of proportionality would require. After the 2009 General Election there were only 28 Muslim MPs, which is less than 39% than their proportional share of 13% (Ansari 2009). This under - representation has been a historical trend. Muslim MPs have on average been allocated only 53% of their proportional share in the last 14 Lok Sabhas. Furthermore, Muslims amounted to only 2.8% of the recommended candidates for civil service jobs after the 2012 exams (Zaidi, 2014: 23). This, however, may not be the result of discrimination in recruitment as the applicants from largely Muslim universities in Zaidi's sample have over double the rate of success in comparison to the Hindus (2014: 24). Zaidi found instead that community factors such as low female participation as well as structural factors such as the cycle of poor education explained the lack of Muslim applicants (2014: 25). This could indicate structural discrimination in education, which a consociational constitution would seek to address, for example, through the use of reservations. Even if admission into the civil service and the legislature is not being denied to Muslims, the figures above show that proportionality is only formally entrenched in relation to a select few minorities.

While proportional elements in India's institutions are lacking, some elements of the institutional set up in India directly contradict the criterion of proportionality. For instance, the constitution adopted the use of the majoritarian Westminster model and first-past-the-post electoral system, which favours only geographically concentrated ethno-linguistic groups. However, Lijphart has argued that the States Reorganisation Act in 1956, which reconfigured state borders to correlate with ethno-linguistic populations, allowed the Indian system to "circumvent" the disproportionate effects of the first-past-the-post system by manufacturing large ethnically defined majorities (Lijphart 1996: 261). However, the geographically dispersed Muslim population has not benefitted from this and now only command a legislative majority in one state being Jammu & Kashmir. The 1956 reconfiguration, therefore, has fostered the legislative dominance of densely populated Hindi speaking northern states (Adeney 2002: 25-26). Wilkinson argues, however, that Muslims and backward castes have become more politically valuable and therefore powerful as they have mobilised more in the wake of the Congress Party's decline and multi-party competition. He maintains that this competition has led, to politicians promising and delivering economic and political benefits to Muslims and low castes for their votes (Wilkinson 2000: 781-

782). As a consequence, Wilkinson insists, 'proportionality' has been enhanced in government employment, political representation but also government spending but the Muslims and OBCs are still, as discussed above, far below their proportional share of representation in government employment. While informal political realities "circumvent" the constitution's inherent majoritarian elements proportionality, when it is attempted, is uneven and is lacking formal entrenchment.

Proportionality also relies on the existence of a grand coalition, that is, the inclusion of various demographic groups into the executive branch of government. However, in India, this is only guaranteed by the dominance of the Congress Party, which unlike its only genuine rival the Hindu majoritarian BJP, is itself a Grand Coalition because of its inclusivity and internal democracy (Lijphart 1996: 260). Being wedged in the ideological centre of India's multi-party system has allowed the Congress to become the party of "historical consensus" as "parties of pressure" apply centripetal pressure that ensures that it remains at the "balance of effective public opinion" (Lijphart 1996: 260; Kothari 1989: 27). This has, according to Lijphart, resulted in the proportional distribution of cabinet positions to all groups, which is impressive given the constraint of only about twenty available positions. As a result, Muslims are much better represented. In the current government, for instance, the Vice-president, foreign minister and the Director of the Intelligence Bureau are all Muslims. While one could argue that that these appointments keep Muslims away from the most pressing issues facing their community in the country such as the Civil Code and reservations, Wilkinson's argument that Muslims are kept from the most powerful positions in India is clearly inaccurate (Wilkinson 2000: 771). Nevertheless, while these appointments are significant, it can be argued that these appointments only symbolise the Congress party's less pervasive "top-down" rather than "bottom-up" representativeness (Lijphart 1996: 264). Furthermore, this Grand Coalition in the cabinet seems to depend entirely on the currently declining Congress dominance rather than invulnerable constitutional laws.

The Constitution protects the 'Congress system' in that it's majoritarian electoral system favours the Congress who enjoy support in breadth and depth across India helping them gain "manufactured majorities". This has been key in maintaining their predominance in most general elections since Independence. Even as the influence of the Congress has waned and India has become a more competitive multi-party democracy, the majoritarian electoral system has allowed the party to maintain enough electoral clout to

form coalitions such as the United Progressive Alliance which include parties from both sides of the ideological spectrum. However, the Constitution has no bearing on the internal composition of Congress so it cannot be responsible for its internal Grand Coalition. Moreover, the first past- the- post system could easily allow Hindu majoritarianism in the form of the BJP to succeed as they are predicted to do in this year's General Election. A consequence of this could well be the destruction of any remnant of Grand Coalition. The reliance on the Congress party for a Grand Coalition makes the latter contingent and vulnerable to short-term political changes. Replacing the first-past-the-post system with a proportional electoral system might destroy Congress dominance but it would also necessitate inter-party Grand Coalitions that would be more genuinely consociational. Adeney suggests that unlike ethnically defined elites with authority over their communities, minority Congressmen and women are not pure representatives of their communities (Adeney 2002: 28). This may be a blunt characterisation but it is clear that 'identity parties' would represent and mobilise their communities more effectively than internal cliques within the Congress. It seems, therefore, that while the institutional set up in India has protected the Grand Coalition that Congress has offered, it prevents proportional representation and the birth of inter-party Grand Coalitions where minorities would be more vehemently represented.

A crucial purpose of proportionality and a Grand Coalition is to engender a functional minority veto whereby minority groups have the power to reject government decisions that affect them. This is usually in the form of an informal understanding like the 1965 agreement not to adopt Hindi as the exclusive national language without the consent of non-Hindi minorities. Lijphart insists that the minority veto works best when it isn't required often (1996: 261-262). Arguably this is the case in India as there have been no legislative threats to either ethno-linguistic federalism or educational autonomy. In the cases where minority rights are threatened, the veto has been historically guaranteed through informal means. The Shah Bano case, for instance, which nullified the Muslim Personal Law against maintenance payments for divorced women was reversed by Parliament under pressure from Muslim protesters. However, to describe India as a constitutionally consociational democracy, formal entrenchment of the minority veto is required. This, however, unlike notable consociational states like Austria and the Netherlands, has not been established through a comprehensive agreement and is the weakest element of Indian constitutional consociationalism. Federalism has allowed regionally concentrated ethno-linguistic

majorities provincial power over some relevant policy areas such as public services and the police. However, Articles 249, 250, 251 and 254 of the Constitution gives the Parliament superior legislative power and thus provincial laws can only be valid if they avoid conflict with national law. This has significantly restricted the legislative freedom of the states. Moreover, the central government itself is not constitutionally restricted by a minority veto. Furthermore, ethno-linguistic federalism fails to protect the state minorities and the first-past-the-post prevents geographically dispersed minorities from proportional representation in the Lok Sabha. In comparison with Colonial India where the Government of India Act 1935 gave colonial Governors "the power to veto bills or even dissolve provincial assemblies if minorities complained of abuse by the majority", Independent India cannot be said to have an institutionalised minority veto.

Cultural autonomy, however, is marginally protected by India's Constitution in three ways. Firstly, the Constituent Assembly that drafted India's Constitution excluded an amendment that would have banned Separate Personal Laws concerning marriage, children and inheritance for Hindus, Muslims and Sikhs. This decision facilitated the 1955 Hindu Marriage Act and 1993 Christian Marriage Act and is a notable success of the incrementalist constitution. Secondly, Article 30 states: "… All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice" while also guaranteeing that public funding will be granted without discrimination. Thirdly, the establishment of ethno-linguistic federalism should protect the cultural autonomy of regional ethno-linguistic groups from threats to cultural diversity. However, this has been undermined by the invasive central government. Indian federalism, which was already limited, was debilitated further in the time of Indira Gandhi. Around the time of her rule the Presidential (direct) rule of states was used extensively for partisan purposes. Between 1968 and 1989 Presidential rule was invoked 66 times and consequently the authority of dissenting state governments was undermined (Lijphart 1996). Although her successors have been less aggressive, it is clear that power has not yet been disseminated back to the states and that therefore ethno-linguistic federalism lacks efficacy. Yet, even weak federalism has led to localised majoritarianism. Although ethno-linguistic state borders may have protected regionally concentrated communities who became provincial majorities, these communities went on to discriminate against the minorities in the new states overriding constitutionally granted personal laws and educational autonomy (Wilkinson 2000: 777-778). Wilkinson used

evidence from the Commission for Linguistic Minorities to show how the state government in Tamil Nadu has consistently refused to provide Hindi education despite it being a constitutional right (Wilkinson 2000: 778). Although cultural autonomy is a key part of the Indian Constitution and is protected in theory by the central government, the federal dimension of cultural autonomy has been unhelpful, failing to protect provincial majorities and diminishing the cultural autonomy of provincial minority groups.

To conclude, it appears that India's constitution fails to adhere to support any of the four criteria of consociationalism despite facilitating some elements of informal consociationalism. . Proportionality in employment and political representation is inconsistently enforced and applied by the Constitution. The majoritarian first-past-the-post electoral system and ethno-linguistic state borders only help geographically concentrated groups as regional minorities lack veto power and are only given indirect representation through either majoritarian parties or the Congress. The Grand Coalition exists for now but without constitutional support, relying on the inclusive Congress, which has lost its historical predominance. Cultural autonomy, although constitutionally backed in some important areas, is not protected at a provincial level where the autonomy of ethno-linguistic state majorities is undercut by the central government. Yet despite this, these majorities then override the cultural autonomy of provincial minority groups. India cannot, therefore, be conceived as consociational on a constitutional basis. The future of Indian consociationalism is, however, less certain. While it is foreseeable that the dysfunctional elements of India's informal consociationalism will die if the Hindu nationalist BJP come to power this year, Lerner argues that India's incrementalist approach to constitution writing may lead to more decisive consociational clarification in the future (Lerner 2010: 76-77).

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