

## ABSTRACT

The exercise of delimitation is the foundation upon which the idea of representative democracy exists. Since the freeze imposed in 1976, the postponement of delimitation has severely undermined the constitutional mandate to uphold the principle of one vote, one value. Such postponement was warranted on the premise that southern states that imposed population control measures were at the receiving end of a population proportionate delimitation thereby affecting their representation in Parliament. The paper argues that interests of individual states cannot justify the continued erosion of voting parity, as such a compromise contradicts the essence of democratic equality.

At this juncture where individual interests are to be balanced with interests of a state, the Council of States emerges as a forum that holds the ability to uphold both interests without any compromise on the other. The Second Chamber of the Indian Parliament in its current form differs from the House of People in terms of its election, composition and powers. However, the formula for allocation of seats in the former mirrors the latter. Therefore, the concept of degressive proportionality must be breathed into the Upper House. In essence, degressive proportionality is the principle under which larger groups are underrepresented, and smaller groups are overrepresented to some extent without fully compromising the principle of one vote, one value.

Key Words: Degressive Proportionality, Universal Adult Franchise, Equal Representation.

# RECONFIGURING THE SECOND CHAMBER: VOTING PARITY MEETS FEDERALISM

## INTRODUCTION

*“No right is more precious in a free country than that of having a voice in the election, other rights, even the most basic, are illusionary if the right to vote is undermined.”*

The principle of “one person, one vote, one value” is the foundation behind universal adult franchise. Our Grundnorm envisages that each state shall be allocated seats in the Lok Sabha in proportion to its population ensuring uniformity in representation across the states.<sup>1</sup> Article 82 necessitates the reallocation of seats after every census.<sup>2</sup> However, the delimitation exercise has been carried out only four times since India's independence. The 42<sup>nd</sup> Constitutional Amendment was introduced in the milieu of growing concerns among southern states about the potential reduction in their seat share due to the population spurt in the northern states, thereby deferring the process of delimitation and seat reallocation until the 2001 census, which was continued till 2026 to protect the interest of southern states.<sup>3</sup> Therefore, the next exercise of delimitation is to take place after the 2031 census. However, when weighed against the fundamental right of equal voting for every individual, the population-control rationale does not seem to hold any water.

## PROPORTIONAL REPRESENTATION - THE CROSSROAD OF INTERESTS

There has grown a staggering disparity between the population sizes of various constituencies. The populations of constituencies in northern regions grew much faster than others, ultimately causing a dilution in the voting power of people in the constituencies of those regions. According to 2011 census, states such as Uttar Pradesh, Bihar and Rajasthan collectively stand underrepresented to the extent of 15-19 seats.<sup>4</sup> On the other hand, quasi-federalism necessitates equal representation.<sup>5</sup>

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<sup>1</sup> INDIA CONST. art 81.

<sup>2</sup> INDIA CONST. art 82.

<sup>3</sup> INDIA CONST. *amended by* The Constitution (Eighty fourth Amendment) Act, 2001.

<sup>4</sup> Milan Vaishnav & Jamie Hinton, *India's Emerging Crisis of Representation*, Carnegie Endowment for International Peace (2019), <https://carnegieendowment.org/research/2019/03/indias-emerging-crisis-of-representation?lang=en>.

<sup>5</sup> Union of India v. Rajendra N. Shah, 2021 SCC OnLine SC 474 ¶ 58 (per R.F. Nariman J.).

Table 1. Malapportionment in the Lok Sabha, 2011 (actual) and 2026 (projected)<sup>6</sup>

State	Current Seats	Proportional Seats (2011)	Over and Under Representation (2011)	Proportional Seats (2026)	Over and Under Representation (2026)
Uttar Pradesh	80	88	-8	91	-11
Bihar	40	46	-6	50	-10
Rajasthan	25	30	-5	31	-6
Tamil Nadu	39	32	+7	31	+8
Andhra Pradesh & Telangana	42	37	+5	34	+8
Kerala	20	15	+5	12	+8

The southern states are being taxed more, on a per capita measure, but receive a smaller share due to their population. However, fiscal federalism cannot deny the basic right of equal voting rights. This is where political federalism steps in. Given the disproportionate increase in population growth among states, a strictly population-proportionate delimitation would radically change the seat share for most states and reduce the representation of the southern states in the Lower House by 24 or more seats.<sup>7</sup>

#### REIMAGINING THE RAJYA SABHA

*“Rajya Sabha is a constitutional caravan that goes on continuously and ceaselessly unlike the other House. It does fulfil a crucial constitutional role. In our electoral system, Lok Sabha can be swept off its feet by sweeping electoral waves and consequent political vagaries. It is the Rajya Sabha, which puts a brake, many times a very healthy brake.”<sup>8</sup>*

From its very inception, the Rajya Sabha was conceived as an institution for preserving India’s federal character and ensuring that the diverse interests of the states found resonance at the central level.<sup>9</sup> While the Lok Sabha would represent the numerical strength of the population, the Rajya

<sup>6</sup> Milan Vaishnav & Jamie Hinton, *India’s Emerging Crisis of Representation*, Carnegie Endowment for International Peace (2019), <https://carnegieendowment.org/research/2019/03/indias-emerging-crisis-of-representation?lang=en>.

<sup>7</sup> Milan Vaishnav & Jamie Hinton, *India’s Emerging Crisis of Representation*, Carnegie Endowment for International Peace (2019), <https://carnegieendowment.org/research/2019/03/indias-emerging-crisis-of-representation?lang=en>.

<sup>8</sup> V.S. Rama Devi, B.G. Gujar, *RAJYA SABHA AT WORK*, Chapter 1, 19 (Rajya Sabha Secretariat, India, 3<sup>rd</sup> edn., 2017).

<sup>9</sup> V.S. Rama Devi, B.G. Gujar, *RAJYA SABHA AT WORK*, Chapter 1, 19 (Rajya Sabha Secretariat, India, 3<sup>rd</sup> edn., 2017).

Sabha was intended to safeguard regional identities. This vision was consistent with the then-popular notion of bicameralism.

The Punchhi Commission revisited the need for a properly functioning upper house, recommending that each state be provided with equal representation, irrespective of population size<sup>10</sup> noting that coalition politics and party dynamics had diluted the federal equilibrium within the Rajya Sabha, and it argued in favour of an amendment to give equality of seats to states.

One of the most critical points in this discussion pertains to the amendment to the Representation of the People Act (RPA), 1951 in 2003, which removed the domicile requirement for candidates seeking election to the Rajya Sabha. Prior to 2003, candidates for the Rajya Sabha were required to be domiciled in the state they represented. By eliminating the domicile requirement, the amended RPA allowed parties to field candidates with no connection to the region they represented and curtailed the house's ability to act as a robust forum for representation of regional interests.

When the amendment was challenged, the Supreme Court upheld its constitutional validity.<sup>11</sup> The Court reasoned that the Rajya Sabha is not designed to safeguard state interests in the same way a federal chamber (like the U.S. Senate) would. Rather, it acts as a “revising chamber” whose function is to provide an additional layer of scrutiny. This increased reliance on party politics to determine how effectively state interests are championed at the national level.<sup>12</sup>

#### *Degressive Proportionality in the Council of States*

Any shift toward degressive proportionality in the Rajya Sabha would require amending the IV<sup>th</sup> Schedule of the Constitution, which at present allocates seats largely according to population. A degressive proportionality-based approach assigns seats through a weighted measure of population potentially with a fixed minimum and maximum number per state so that smaller states gain more than a token presence. The idea of degressive proportionality perfectly aligns with the vision of the Union Constitution Committee set up by the Constituent Assembly:

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<sup>10</sup> JUSTICE M.M. PUNCHHI COMMISSION, *Report of the Commission on Centre-State Relations*, 34 (March 30, 2010).

<sup>11</sup> *Kuldip Nayar v. Union of India*, (2006) 7 SCC 1, ¶ 44 (per Y.K. Sabharwal, C.J.).

<sup>12</sup> Rishi Ray, *Removal of 'Domicile' Requirements for Rajya Sabha - Potential Threat to Federal Structure*, 2013 SSRN Elec. J., <https://doi.org/10.2139/ssrn.2378129>.

*“The units should have representation in the Council of States on the basis of one member for every whole million population upto five million, plus one member for every two additional million, subject to a maximum of twenty for a unit.”<sup>13</sup>”*

To give effect to the principle of degressive proportionality, certain changes may have to be enacted in the Constitution and ordinary legislative enactments. Firstly, the total number of seats in the Council of states ought to be increased through a Constitutional Amendment in Article 80(1). This is to ensure that, in allowing smaller states to have improved representation, and does not grossly diminish representation of larger states. Secondly, an enactment, under Article 327, governing the procedure of calculation and subsequently its calculations must be passed to determine the number of seats that are to be allocated to each state. Based on these calculations, an amendment must be brought for the IV<sup>th</sup> Schedule, allocating the seats to the various states based on the degressive proportionality calculations. Finally, an amending legislation in the Representation of People Act, 1950 in section 27A to incorporate the up-to-date seat allocations for the Union Territories.

#### CONCLUSION

The exercise of delimitation has been deferred time and time again. What started as a move to protect political interests of southern states has now severely undermined the fundamental tenet of a representative democracy - one person one vote one value. The principle of Degressive Proportionality, if implemented properly in the Rajya Sabha, will sufficiently represent the interests of all states. The Parliament should consider increasing the powers of Rajya Sabha with respect to Money Bills providing states a greater say in the fiscal policy of the country. Furthermore. Bodies like the Finance Commission and NITI Aayog can play a pivotal role in promoting cooperative federalism if interests and concerns of all the states are adequately addressed in such key decision making or advisory bodies. However, population proportionate representation must remain at the core of delimitation exercise for Lok Sabha and the number of seats be increased to preserve the interests of the underrepresented.

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<sup>13</sup> V.S. Rama Devi, B.G. Gujar, RAJYA SABHA AT WORK, Chapter 1, 19 (Rajya Sabha Secretariat, India, 3<sup>rd</sup> edn., 2017).

The exercise of delimitation requires deeper deliberation between policy experts, think tanks and relevant stakeholders to devise a formula, one of its own kind, tailored to the challenges that the world's largest democracy today faces.