

**TO CONSOCIATE OR NOT TO CONSOCIATE:
UNDERSTANDING THE PARADOX OF ELITE
DOMINANCE AND CONSTITUTIONALISM**

DAISY VERGHESE¹ & PARVATHY K ARUN²

Almost five decades since the inception of the political theory of consociationalism in understanding a divided society, the rise of populism has led to contrasting academic views on its effectiveness. Initially propounded by Arend Lijphart to mitigate ethnic disparities, the present contribution delves into the complex reality of the theory in the Indian context. India, in her post-independence era, was increasingly adopting the consociationalist polity that focused on balancing the interests of diverse groups in the country. However, the empowerment of the elite within the majority groups due to such polity arrangements resulted in a puzzlingly destabilised political structure. Beginning with an exploration of this theory and its intended aspirations, the paper navigates its complex application in the Indian scenario. With this backdrop, the paper posits the contemporary application of the theory that C the correlation between the theory and elite dominance, with the subsequent oppression of minority groups. It underscores a notable surge in ethnic violence during the post-Neburu consociational period in India, driven by the propensity of the backward classes to advocate for separate ethnic group recognition, each deserving of its own set of fundamental rights. The paper concludes by providing alternate policy structures that nullify such dominance by promoting social harmony. Thus, it is essential to understand the paradoxical nature of this theory to alleviate minorities' democratic representation and to ensure their constitutional rights and safeguards.

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¹ Daisy Vergheese is a final-year student at Symbiosis Law School, Hyderabad. The author may be reached at daisyannaverghese@gmail.com.

² Parvathy K Arun is a final-year student at Symbiosis Law School, Hyderabad. The authors may be reached at parvathyarunk@gmail.com.

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**THE WOLVES AT THE DOOR OF A STABLE DEMOCRACY:
AN INTRODUCTION TO UNDERSTANDING
CONSOCIATIONALISM**

Consociationalism reflects a stable democracy coupled with a power-sharing mechanism, instituted in the backdrop of a country entrenched with deeply divided groups (religious, racial, linguistic, or otherwise).³ Social caveats such as language, ethnicity, religion or class often become impediments in achieving stability in a country's democratic system, especially when such caveats coincide.⁴ However, it has been postulated that despite the same, stable democracies have indeed existed.⁵ The reasoning behind this is based on the presumption of the elites coordinating with the varying groups of society, thereafter facilitating avoidance of conflicts.⁶ This forms the essence of the consociationalism theory. The main goals of this theory aim at achieving stability in governance, incorporating a power-sharing agreement, a surviving democracy, and finally, evading violent conflicts.

The first model of the theory of consociationalism has its origin stemming from the 1960s, authored by Arend Lijphart. The same focused on the puzzling dilemma of Belgium, Switzerland, the Netherlands, and their stable democratic systems despite the presence of varying religious and

³ AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* 32 (Yale University Press, 1st ed., 1977).

⁴ Sabine Saurugger, *The Theory of Elite Cooperation*, BRITANNICA (Apr. 13 2013), <https://www.britannica.com/topic/consociationalism>.

⁵ LIJPHART, *supra* note 3, at 37.

⁶ *Id.*

ethnic diversities.⁷ Lijphart concluded in ‘*Democracy in Plural Societies*’ that the only possible rationale behind this unique stability in their governance is the amalgamation of four policies, which he collectively termed as Consociationalism.⁸ He stated that the theory featured minorities in a method that grouped the latter in a ‘*grand coalition*’ which inculcated a greater sense of autonomy in their cultural diversities.⁹ The theory further granted minorities the power of veto in matters concerning legislations being passed, and made “*ethnic proportionality...the principal standard of political representation, civil service appointments, and allocation of public funds.*”¹⁰

Since its inception, scholars have elevated the theory to a pedestal, treating its principles not only as tools to resolve conflicts but as guidelines to avert ethnic conflicts globally. Other scholars, supporting Lijphart’s view, identified three countries - Lebanon, Colombia and Cyprus, where such consociational policies have reduced conflicts.¹¹ A prominent example of the same occurred in 1985, when Lijphart argued that, in keeping with the ethnically divided society of South Africa, consociationalism is the only method to successfully traverse such vagaries.¹²

Thus, this form of power-sharing essentially mandates the fair representation of all “politically-relevant” groups¹³ within the governance of the nation to impede violence and incorporate a system of checks on the possible rule by the majority groups. A majoritarian democracy is often characterized by the winner-takes-all governance, where a single party with a centralised and disproportional power heads the state. In contrast, a democracy under consociationalism is more stable, whereby it necessitates

⁷ Steven Ian Wilkinson, *India, Consociational Theory, and Ethnic Violence*, 40(5) ASIAN SURV. 767, 767 (2000).

⁸ LIJPHART, *supra* note 3.

⁹ *Id.*

¹⁰ LIJPHART, *supra* note 3, at 25.

¹¹ WILKINSON, *supra* note 7, at 768.

¹² *Id.*

¹³ Timofey Agarin, *Minorities in Consociational Power-sharing*, 50 SHADES OF FEDERALISM (2019), <https://50shadesoffederalism.com/uncategorized/minorities-in-consociational-power-sharing/>.

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the precondition of a power-sharing agreement, all the while maintaining the stance that the latter is not sufficient.¹⁴

Consociational theory has a substantive role in influencing interpretations in the domain of comparative politics. Consequently, the same has spawned a plethora of academic contributions with scholars ranging from Daalder and Powell stating the consociationalism theory as “*the most influential contributions to comparative politics.*”¹⁵ Scholars widely accepted this paradigm as a tool for understanding how power-sharing democracies operate in deeply divided societies; this includes the nations of Lebanon, Netherlands, Belgium, Austria, among others.¹⁶ Furthermore, as priorly mentioned, a consociationalist democracy proved to form a normative ideology in shaping a more stable Constitution in South Africa in the year 1988.¹⁷ Given its prominence as a normative model of a stable democracy in an ethnically divided nation, the theory has subsequently encountered a myriad of criticism,¹⁸ but has successfully held its ground barring a vulnerability; the glaring contradictory instance of Indian Democracy.

Lijphart, in his theory, had initially excluded the entry of India as a consociational state. However, he disputed this position in his later academic work in the 1990s, where he echoed Paul Brass’s work.¹⁹

This contribution is fundamentally centred on shedding light on the key dichotomy inherent in the consociationalism theory. The reader is apportioned to the introductory reflections as Lijphart propounded, thereafter in Part B, detailing the various pillars that form the foundation of the theory of consociationalism. For a comprehensive take on the theory, Part C deals with the various sophistries of the theory, thereafter offering an objective critique of the theory. In Part D, the complexities of

¹⁴ Arend Lijphart, *The Puzzle of Indian Democracy: A Consociational Interpretation*, 90 AM. POL. SCI. REV. 258, 258 (1996).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 259.

¹⁹ Katharine Adeney & Wilfried Swenden, *Power-Sharing in the World’s Largest Democracy: Informal Consociationalism in India (and Its Decline?)*, 25 SWISS POL. SCI. REV. 450, 451 (2019).

the theory are decoded against the backdrop of the Indian scenario, with three differing eras of political change in the country: the pre-independence era, Nehruvian era, and concluding with the post-Nehru era. In Part E, the authors examine the prominence of Hindu Nationalism in the country. In Part F and Part G, the paper further explores the theory by examining its connection to the rise in ethnic violence in India; despite its seemingly contradictory theoretical position. Part H covers a comparative analysis with Netherlands as the country is known for its exemplary implementation of the consociational theory in managing conflicts within a deeply divided society. Lastly, Part I deals with alternate policy structures with an optimistic prospect of the same fitting within the confines of India's complex and puzzling democracy, leaving a tangent untouched for future academic contributions.

DECODING THE TENETS OF CONSOCIATIONALISM

Power sharing often remains the pinnacle of political strategy in maintaining peace, especially in instances concerning protracted conflicts. It is often seen that rival groups tend to negotiate and settle quicker when given a share of power. The theory of consociationalism is often seen as synonymous with the concept of power sharing,²⁰ insofar as the former is considered an institutional strategy specifically entailing the complexities of a deeply divided nation, as propounded by Arend Lijphart. The primary motive of this theory is the division of power among conflicting groups in order to usher in an era of consensus-based cooperation between differing ethnic groups.

The theory is grounded on four basic institutional pillars: first, the “*grand coalition*” of the various ethnic groups in the nation, second, “*segmental autonomy*”, third, “*proportionality*” and fourth, “*minority veto*”.²¹ The elements of grand coalition and segmental authority form the essential foundation of the theory which is then reinforced by the tenets of minority veto and proportionality.

²⁰ Devin Haymond, *Minority Vetoes in Consociational Legislatures: Ultimately Weaponisation?* 6 POL. IND. J. CONST. DESIGN 1, 1 (2020).

²¹ *Id.* at 2.

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The initial pillar of grand coalition entails representation of all the varying groups existing in the society.²² Thus, according to the tenet, a reasoned consensus-based decision-making process occurs through a coalition of all the leaders representing their respective groups for the purpose of national governance.²³ The tenet, however, mandates the precondition of a feeling of mutual cooperation among all the leaders for the said power-sharing form of governance.

Secondly, the next pillar of segmental autonomy parallels that of the ideal of federalism.²⁴ It has been elaborated upon by Ulrich Schneckener that the said pillar comprises two types: one, an aspect of territorial autonomy, and then one of personality.²⁵ The former deals with the autonomy of territory, i.e., federal structures, and the latter specifically entails a sense of “*elected, non-territorial, self-governing communal chamber...or private institutions which obtain certain responsibilities for each community.*”²⁶ The element of federalism is essential in the coalescence of decentralising non-general issues and keeping the ethnically diverse groups separate. The strength of this tenet is essential for the following pillar, i.e., in determining the fundamentals of a minority veto.²⁷

The third pillar deals with the tenet of minority veto. In a society characterized by significant ethnic diversity, the promulgation of policies and ordinances by the central government often results in the inadvertent marginalization of certain groups.²⁸ Thus, the justification of such a veto arises from the guarantee “...of *proportional representation of minority groups in a power-sharing assembly and/or executive are not sufficient to protect the vital interest of that minority because the latter may simply be outvoted.*”²⁹ If the decision-making

²² LIJPHART, *supra* note 3, at 25.

²³ *Id.*

²⁴ HAYMOND, *supra* note 20, at 2.

²⁵ *Id.*

²⁶ Ulrich Schneckener, *Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation*, 39 J. PEACE RES. 203, 222 (2002).

²⁷ LIJPHART, *supra* note 3.

²⁸ *Id.* at 46.

²⁹ Shane Kelleher, *Minority Veto Rights in Power Sharing Systems: Lessons from Macedonia, Northern Ireland and Belgium*, ADALAH'S NEWSL. 1, 3 (2005).

process concludes in a manner inimical to the interests of the minority group, then the legitimacy of the said power-sharing bureaucracy is threatened. It is then that Lijphart propounds the grant of minority veto power to preserve the “*vital interests*” of the said minority groups.³⁰ Therefore, this element of minority veto in a democratic society essentially becomes an informal strategy that allows minorities to block attempts that could effectively eliminate or reduce the latter. Lijphart argues that the successful adaptability of the provision of a minority veto depends on (1) protection of the vital interests of the minorities, and (2) the minimalistic application of said power so that the same does not transist to a political weapon against other co-existing groups.³¹

The final pillar of proportionality deals with “*allocating civil service appointments and scarce financial resources...in the form of government subsidies*” among the differing groups in the nation.³² In accordance with the said tenet, the electoral system of the democratic nation follows the essence of proportional representation. The plurality form of elections often tends to cause over-representation of the majority groups. To circumvent the same, the current power-sharing theory propounds the final tenet of proportionality in parliamentary seats and other governmentally-aided positions. Thus, the pillar essentially focuses on maintaining proportionality in representation at the political arena and civil service appointment.

PUNCTURING THE WONDERLAND WORLD OF CONSOCIATIONALISM: INTERPRETING THE SOPHISTRIES OF THE THEORY

Although initially asserted by Lijphart that there exists a general consensus of favouring the theory in the scholarly community, there has been an appraisal of questions regarding the very viability of the theory in a nation deeply divided in its ethnic groups.³³ It is to be noted that consociational institutions are not designed in a manner that would assist in predicting outcomes for every ethnically divided society. The reason for the same

³⁰ LIJPHART, *supra* note 3, at 36.

³¹ LIJPHART, *supra* note 14, at 262.

³² ADENEY & SWENDEN, *supra* note 19, at 455.

³³ LIJPHART, *supra* note 3.

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stems from the fact that consociations do not have an identical template and are rather tailor-made for accommodating all exigencies in a particular society.³⁴ The reasoning as to why this variance occurs, is due to instances wherein the consociations are fitted in a manner that assures various constituent groups' representation over others.³⁵ This occurs through fixed quotas for public or government sector positions. Such fixed quotas only further "*entrench and institutionalise...ethnic identities.*"³⁶

The proportional representation ("PR") strategy has been associated with several drawbacks in its attempt to stabilise the power-sharing arrangement. One such drawback of this system is its ability to foster the existence of extremist parties that consequently wish to impose their oppressional rigid ideologies.³⁷ Furthermore, there exists sufficient reason to believe that the strategy of PR leads to selective incentivization of a single party, thereby leading to a campaign strategy which would be perused in a centrifugal manner – that is, the most effective method of campaigning is courting of voters with relatively extremist views rather than ones with moderate views.³⁸ In a consociational society, parties that would be representing a particular ethnic group gain parliamentary representation that would be proportionate to the population of that group, and have their incentives aligned in a manner that would play up the ethnic differences. This strategy would only harden said ethnic differences rather than accommodate the vagaries and build for cross-ethnic parties or coalitions.³⁹

Furthermore, the requirement of power-sharing coupled with PR, would lead to a dense situation of governmental paralysis by increasing the necessity of having a governing coalition party, consisting of several

³⁴ Joel Selway & Kharis Templeman, *The Myth of Consociationalism? Conflict Reduction in Divided Societies*, 45 COMPAR. POL. STUD. 1543, 1551 (2012).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1547.

³⁸ *Id.*

³⁹ WILKINSON, *supra* note 7, at 771.

parties.⁴⁰ The status quo of such systems will be heavily hit with built-in biases. Generally, in such a governing party comprising several varied ethnic groups, the passing of a legislation proves to be a tedious task.⁴¹ Therefore, the concern of an effective government continually lingers in a society with deeply rooted, long-standing, ethnic conflicts such as: Ethiopia, Liberia, Angola, Iraq and Congo.⁴² Thus, this particular tenet of consociationalism hinders the peaceful consolidation of the nation, due to the parallel growth in polarised and fragmented party system that only hinders the steepening challenge of governance in the nation.⁴³

Finally, academic rhetoric on federalistic arrangements has, by no means, reached a consensus either. Lijphart argues that federalism, an essential element in his consociationalism, is an excellent way of maintaining autonomy in a divided nation. However, for the same, there exists an assumption of such autonomy being the driving force in democratically consolidating the divided ethnic groups of the country – an assumption lying far from reality.⁴⁴ It has been shown through several studies that such a form of federal arrangement has only deepened such differences and adopted an increasing stance towards secessionist tendencies, consequently reinforcing territorial ethnic differences.⁴⁵ Further, decentralisation of the central authority with respect to each state's jurisdictional power has been linked to be the stepping stone of regional parties, the presence of which have been the propeller of conflicts, solely based on said secessionist tendencies.⁴⁶

⁴⁰ GEORGE TSEBELIS, *HOW POLITICAL INSTITUTIONS WORK*, (Princeton University Press, 1st ed., 2002).

⁴¹ *Id.*

⁴² PIPPA NORRIS, *DRIVING DEMOCRACY: DO POWER SHARING INSTITUTIONS WORK?* 11 (Cambridge University Press, 1st ed., 2012).

⁴³ Benjamin Reilly & Andrew Reynolds, *Electoral Systems and Conflict in Divided Societies* in PAUL C. STERN & DANIEL DRUCKMAN (EDS.), *INTERNATIONAL CONFLICT RESOLUTION AFTER THE COLD WAR* (National Academies Press, 1st ed., 2000).

⁴⁴ LIJPHART, *supra* note 14, at 262.

⁴⁵ PHILIP G. ROEDER & DONALD ROTHCHILD (EDS.), *SUSTAINABLE PEACE: POWER AND DEMOCRACY AFTER CIVIL WARS* 135 (Cornell University Press, 1st ed., 2005).

⁴⁶ SELWAY & TEMPLEMAN, *supra* note 34, at 1549.

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**NAVIGATING THROUGH THE TROUBLED WATERS OF
DEMOCRATIC INDIA**

	Pre-Nehruvian Era	Nehruvian Era	Post Nehruvian Era
Lijphart	<i>De-facto</i> consociational state (unstable and externally imposed)	<i>De-facto</i> consociational state (stable and internally maintained)	Decreasingly consociational
Wilkinson	Consociational	Non-consociational “ranked” state	Increasingly consociational

TABLE: TWO CONTRASTING VIEWS OF INDIA’S CONSOCIATIONAL CHARACTER⁴⁷

A. INDIA BEFORE NEHRU

In the words of Winston Churchill, India was merely “*a geographical term*” and was “*no more a united nation than the Equator.*”⁴⁸ This sentiment was echoed by Sir John Strachey, who argued that there was never any kind of unity in India, whether physical, political, social, or religious.⁴⁹ Such views were not unfounded, given the country's vast diversity of ethnolinguistic and religious groups, which rival that of the entire continent of Europe.⁵⁰ In an era where homogenized nation-states were emerging from fragmented empires, the British perceived Indian unity as a mirage.

⁴⁷ WILKINSON, *supra* note 7.

⁴⁸ *Supra* note 10, at 261.

⁴⁹ LIJPHART, *supra* note 14, at 262.

⁵⁰ *Id.*

Ironically, however, it was the British colonial administration that played a significant role in transforming this mirage into a concrete reality.⁵¹

The emergence of Indian nationalism can be traced back to the 1885 establishment of the Indian National Congress (“**INC**”), which ultimately led the country to independence and governed India for the first fifty years after independence.⁵² The objective of the INC was “*to mould Indians into a common state*” and establish the “*germ of a Native Parliament*” that would demonstrate India’s readiness for representative institutions.⁵³ The INC thus aimed not only to create pan-Indian political structures, but also to foster a shared national identity among Indians, acknowledging that such unity was not yet fully realized.

The INC’s efforts to unite diverse ethno-linguistic and religious groups, coupled with the British colonial framework for minority representation, contributed to a complex interplay of identities that shaped the trajectory of Indian nationalism and governance. Therefore, while India was not a consociational state *de jure*, many of its political dynamics during the pre-independence period reflected consociational thinking *de-facto*. Drawing on Lijphart’s classification, the following section examines how key features such as minority proportionality, political representation, segmental autonomy and minority veto cultivated an informal, *de-facto* consociational model in pre-independent India.

Minority Proportionality in Government Employment

During the period leading up to independence, this principle was grounded in the governance of the state (provincial) and central governments. In 1925, in a bid to protect what they perceived as weaker sections of society, the colonial government allotted a share of the civil service employment to the minority groups.⁵⁴ The proportion allotted was based on the respective population sizes of the groups. Accordingly, Christians and Sikhs were allotted 8.3%, while Muslims received 25% (in keeping with

⁵¹ *Id.* at 258.

⁵² ADENEY & SWENDEN, *supra* note 19, at 454.

⁵³ *Id.*

⁵⁴ WILKINSON, *supra* note 7, at 774.

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their approximate population of 23.8%).⁵⁵ Elected provincial governments were granted the power to determine quotas based on factors such as religion, language and caste, attempting to maintain an equal share for each group and sub-group. However, sometimes this resulted in over-representation within the employment sector. For example, although Muslims comprised only 6% of the population in Madras, they made up nearly 17% of the police force. Similarly, in Bihar, the highest proportion of police positions were occupied by Bengali-speakers and Muslims; 28.5% and 17.8% respectively.

Political Representation

As power gradually shifted from the British to Indian politicians, particularly following the Government of India Acts of 1919 and 1935, Muslims became increasingly determined to maintain and expand their reserved seats and political weight. However, the Congress Party, initially led by an elite group from the anglicised upper-middle class, sought to eliminate reserved seats, viewing them as undemocratic and a hindrance to developing a shared Hindu-Muslim national identity.⁵⁶ This tension was further exacerbated when mass protests erupted against the British decision to divide Bengal, catching Congress leadership off guard and calling their conciliatory approach into question.

The Muslim League passed a resolution in March 1913 advocating for colonial self-government through constitutional means, aligning itself with the Congress Party's objectives. This set the stage for broader Hindu-Muslim political accommodation and cooperation.⁵⁷

For a grand coalition to materialise, groups that are small within the polity must be over-represented so that their voice is adequately heard.⁵⁸ The Lucknow Pact of 1916 exemplified such cooperation, as Congress politicians agreed to the Muslim League's demand for overrepresentation of Muslims in six Hindu-majority provinces, while Hindus and Sikhs

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ JUDITH BROWN, *MODERN INDIA: THE ORIGINS OF AN ASIAN DEMOCRACY* 281 (Oxford University Press, 2nd ed., 1994).

⁵⁸ WILKINSON, *supra* note 7, at 746.

would be overrepresented in three Muslim-majority provinces. The principles established by the Lucknow Pact were later applied to new municipal councils, district boards, and legislative bodies created following the 1919 constitutional reforms. For instance, in Bombay, Muslims, constituting 20% of the population, were guaranteed 33% of the seats in the provincial assembly, while the 4% Muslim minority in the Central Provinces was allocated 15% of the seats.⁵⁹

Princely states that established legislative assemblies in the 1920s and 1930s, such as Travancore, Cochin, and Mysore, followed suit by introducing reserved seats for religious and caste minorities. By 1947, various groups, including Christians, Sikhs, Europeans, Scheduled Castes, and speakers of regional languages were guaranteed representation in local legislatures.

Cultural Autonomy and Minority Veto

Pre-independence India also exhibited consociational principles such as cultural autonomy and minority veto. Different communities administered their own personal laws and Urdu enjoyed equal status with Hindi as an official language at both central and provincial levels.⁶⁰ However, the Muslim League's sweeping victory in the 1946 elections and its refusal to compromise with Congress created a political impasse that contributed to the partition of India in August 1947.⁶¹ This outcome highlighted the limitations of the INC's attempt to build a unified India, without formal power-sharing guarantees. Despite this, a significant number of Muslims chose to remain in India post-partition, affirming their place within the newly independent nation.

While the independence movement drew strength from local grievances and economic frustrations, it ultimately galvanized a national consciousness that transcended ethnic and religious divisions.⁶² This consciousness did not negate individuals' diverse identities; rather, it

⁵⁹ *Id.*

⁶⁰ BROWN, *supra* note 57, at 283.

⁶¹ WILKINSON, *supra* note 7, at 714.

⁶² ADENEY & SWENDEN, *supra* note 19, at 450.

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complemented them within a broader Indian identity.⁶³ Despite the lack of a formal system of minority veto powers, colonial governors were tasked with safeguarding the interests of the minority groups or often intervening by dissolving provincial assemblies.⁶⁴ This usually occurred in instances where concerns were raised against the majority for the former's abuse of power.⁶⁵

However, contrary to Lijphart's predictions, the consociational pre-independence period in India has paradoxically been marked by significant levels of ethnic violence. The Indian subcontinent witnessed a terrifying outbreak of sectarian violence, particularly severe in Punjab and Bengal during the Partition of 1947. Regions that had peacefully coexisted for centuries were engaged in a brutal conflict, primarily driven by entrenched religious disparities. The growing unity between Hindus and Muslims was perceived as a threat to British colonial rule, prompting a strategic move to exploit religious divisions.⁶⁶ The partition of Bengal into two provinces: West Bengal with a Hindu majority and East Bengal with a Muslim majority, was met with fierce opposition. Hindus feared a loss of political influence, while Muslims were under the threat of marginalisation in East Bengal. The partition of Bengal exacerbated the existing tensions between Hindus and Muslims, igniting a number of riots and communal violence that fostered separation and animosity between the two communities.⁶⁷

The extreme violence witnessed during the Partition of Bengal and Punjab thus serves as a critical warning. It sheds light on the fact that consociational policies can deepen ethnic conflicts rather than resolve them, leading to greater division and instability. This historical evidence should caution constitutional designers against solely relying on consociational approaches as a remedy for ethnic violence.

⁶³ *Id.*

⁶⁴ *Id.* at 451.

⁶⁵ WILKINSON, *supra* note 7, at 734.

⁶⁶ Ian Talbot, *The 1947 Partition of India and Migration: A Comparative Study of Punjab and Bengal* in CLAUDIA B. HAAKE & RICHARD BESSEL (EDS.), *REMOVING PEOPLES: FORCED REMOVAL IN THE MODERN WORLD* (Oxford University Press, 1st ed., 2009).

⁶⁷ *Id.*

To sum up, despite not being a consociational state, the pre-Nehruvian period in India incorporated key consociational features in practice, albeit informally. The British colonial framework coupled with the INC's inclusive rhetoric, fostered communal representation and segmental cultural autonomy for minorities to manage India's deeply entrenched ethno-religious and linguistic cleavages. However, the eventual collapse of this framework, evidenced by the Muslim League's political estrangement, the failure of the INC to build a unified polity and the catastrophic communal violence of Partition highlighted the limitations of power-sharing in the Indian context. Thus, consociationalism, while valuable, cannot be considered a panacea for inclusion. Lijphart's assumption that consociationalism helps mitigate ethnic violence is strongly rebutted by the extreme levels of violence during this era. The Indian experience clearly reflects that partially implemented or weakly institutionalized consociational frameworks may in fact entrench divisions rather than alleviating tensions.

B. INDIA DURING NEHRU

Arend Lijphart, in 1996, propounded India to be a *de-facto* consociational state, due to its relatively effective control over ethnic violence, coupled with the existence of conditions that paralleled the four pillars of this theory.⁶⁸ Lijphart argued that India, since its independence, was under the governance of the “*grand coalition*” with respect to the ethnically inclusive ruling party (for the time, it was the dominant Congress Party), which, through the enforcement of personal laws, aimed at achieving cultural autonomy. Congress was termed as a “*party of consensus*” relating to its ability in allocating “*a share of ministerships remarkably close to proportional*” to varying groups.⁶⁹ This practice then became the umbrella modus-operandi, i.e., it furthered its incorporation into the domains of education, and employment in government offices,, and the same was achieved through the system of reservation of seats (with respect to the SC, ST and OBC groups in the society).⁷⁰ According to Lijphart, the final element of the Theory, the power to veto among minority groups, stems from practices

⁶⁸ LIJPHART, *supra* note 14, at 258.

⁶⁹ *Id.*

⁷⁰ *Id.* at 258.

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such as retaining English as an official language (which occurred due to the veto power of the non-Hindu speaking community) and the reversal of the contentious *Shah Bano* judgment.⁷¹

It is these policies that Lijphart advocates to highlight the consociational essence of India's democracy, thus stating the reduced levels of ethnic violence until the mid-1960s. He further argued that, during the former era, the incident count of Hindu-Muslim in a 5-year span was 339, and the former only increased in 1980s, with the statistics soaring to a high 2000 and above.⁷²

However, Lijphart's classification of India as a consociational state has been subject to considerable critique on multiple interconnected grounds. The diversity of representatives in the Cabinet that Lijphart cites as evidence of a grand coalition was in reality "*Congressmen and women, very different from an ethnically defined elite cartel with authority over and autonomy from the community they represent.*"⁷³ These individuals were largely symbolic and lacked any substantive influence, thereby rendering them as 'token' rather than 'representative' figures.⁷⁴ Consequently, the so-called grand coalition cannot be understood as a "*deliberate or joint stabilising effort by elites*"; rather it was heavily reliant on the leadership and authority of a single figure-Jawaharlal Nehru.⁷⁵ Key groups (in particular lower castes and Muslims) continued to remain significantly underrepresented in proportion to their demographic presence, particularly in senior political, administrative and judicial offices. While there were certain instances where the Indian state allowed cultural autonomy, most notably in terms of the linguistic reorganisation of states, it was fiercely opposed by Nehru, who only conceded later on due to electoral pressures.⁷⁶

⁷¹ *Id.* at 261.

⁷² *Id.* at 259.

⁷³ Katharine Adeney, *Constitutional Centring: Nation Formation and Consociational Federalism in India and Pakistan*, 40 COMMONW. AND COMPAR. POL. 8, 12 (2002).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Supra* note 37, at 238.

Lijphart's fallacious classification of India being a consociational state further stems from "reading the Indian Constitution and central government policies, rather than by examining central and state government actions."⁷⁷ During the period of 1947-64, none of the major cabinet roles were given to Muslims.⁷⁸ The prime example of the same was the contentious issue surrounding the appointment of Rafi Ahmed Kidwai, the Muslim home minister of Uttar Pradesh, a Muslim, during 1946-47.⁷⁹ Mr. Rafi was forcefully persuaded to hand in his resignation and his appointment was believed to be a "security risk" by other Hindu leaders in the ministry.⁸⁰ In an attempt to evade humiliation, he was appointed to a rather unscrupulous post of the communications ministry with a stern pre-condition to not interfere with the politics of the state.⁸¹ This thereafter becomes a clear instance of keeping Muslim political candidates at bay from gaining political power.⁸² Such a practice furthered into other domains such as employment. For a better understanding, the following statistics present a clearer picture: there was a grave reduction in job quotas for the Muslim candidates in 1947 (4.5% in Central Province, 10% in Bihar, 14% in UP).⁸³

Following independence, governments majorly dominated by Hindus had completely done away with the practice of minority quotas. A significant reduction occurred in the employment sphere of police and civil services. This stems from four factors: the inherent practice of 'rewarding' loyal supporters (mostly Hindus) of the winning political party, the prejudice against minority groups especially post-partition, several Muslim officers emigrating to Pakistan, and finally, the rapid increase in Hindu officials from Pakistan. In the UP, internal government files reveal that the

⁷⁷ WILKINSON, *supra* note 7, at 771.

⁷⁸ A. B. KOHLI, COUNCIL OF MINISTERS IN INDIA 1947-1982 (Gitanjali Publishing House, 1st ed., 1983).

⁷⁹ *Id.*

⁸⁰ Omar Khalidi, *Muslims in Indian Political Process: Group Goals and Alternative Strategies*, EPW 43,45 (1993).

⁸¹ Anwar Jamal Kidwai, *An Unsung Hero of the Freedom Struggle: Rafi Ahmed Kidwai* 24 ISLAM & MOD. AGE 102 (1993).

⁸² *Supra* note 9.

⁸³ *Id.*

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proportion of Muslims among the senior police force and civil service officers dropped from 40% in 1947 to 7% in 1958.⁸⁴

Lijphart's argument that India meets the criteria for minority veto was further criticized for overlooking substantial evidence to the contrary. This not only includes the removal of reserved seats for religious minorities but includes the abolition of protection for Urdu speakers as well as the ban on cow slaughter in many states.⁸⁵ As observed by Lustick, the Indian state adopted many policies that marginalised non-Hindu groups.⁸⁶ The yearly reports of the Commission for Linguistic Minorities showed that the state governments tried to deny educational facilities and copies of government publications and civil service examinations in minority languages. For example, Tamil Nadu consistently refused to provide Hindi language education, while the government of Uttar Pradesh refused to open more Urdu high schools because it was simply not inclined to provide secondary education through the mother tongue of linguistic minorities.⁸⁷ Furthermore, the provisions that provided cultural autonomy for the linguistic or religious minorities within the newly created linguistic states were routinely ignored.⁸⁸ As Adeney argues Nehru "*deliberately ignored ethnicity as a means of legitimising the state, basing affiliation on a civic notion of territoriality.*" Though there may have been segmental autonomy in practice, the rationale behind its adoption was a non-consociational one.⁸⁹

Despite the retention of personal laws for Muslims and Christians, the absence of a minority veto resulted in "*state attacks on minority cultural autonomy*".⁹⁰ The Muslims, for instance, voted overwhelmingly in the 1946 elections for the Muslim League, a party dedicated to preserving the position of Urdu, job reservations for minorities and guaranteed Muslim

⁸⁴ File No. 49H/1958, *Inquiry Made by the Government of India About the Employment of Members of the Minority Communities*, UTTAR PRADESH STATE ARCHIVES (1958).

⁸⁵ WILKINSON, *supra* note 7, at 774-775.

⁸⁶ *Id.*

⁸⁷ WILKINSON, *supra* note 7, at 770.

⁸⁸ *Supra* note 63, at 778.

⁸⁹ *Supra* note 14, at 450.

⁹⁰ WILKINSON, *supra* note 7, at 778.

representation at all levels of government.⁹¹ After mid-1947, though, Hindu majorities could do what they pleased. They unilaterally abolished job reservations for minorities, guaranteed political representation, the special status of Urdu, and minorities' right to slaughter cows for food and religious sacrifices.⁹² Additionally, despite linguistic reorganization giving linguistically defined states representation in the upper house, such representation was roughly determined on the basis of population, thereby ensuring "*the domination of the larger populated Hindi-speaking states of the north in both the lower and upper chambers of the central legislature*".⁹³

Therefore, though India was a consociational state before independence, from 1947 to 1964 it was a non-consociational state in which lower castes, religious minorities and linguistic minorities within states were denied cultural rights and largely excluded from government jobs and political power.⁹⁴

C. INDIA AFTER NEHRU

Lijphart pointed to a decline in consociationalism after the Nehruvian era on the grounds that "*the Congress Party evolved from an internally democratic, federal, and consensual organisation to a centralised and hierarchical party.*" He further posited the increasing centralisation of the federal system through the partisan use of President's rule and the increasing support for parties such as the Bharatiya Janata Party ("**BJP**") who protest at the "*government's alleged pandering to minorities.*"⁹⁵

However, this characterisation has been contested vigorously by Wilkinson who argued that rather than Indian democracy becoming less consociational after Nehru, the latter had in fact become more consociational.⁹⁶ The gradual decline of Congress and the fragmentation of the party system from one party dominance played an important role in

⁹¹ *Id.*

⁹² *Id.* at 779.

⁹³ Katharine Adeney, *Constitutional Centring: Nation Formation and Consociational Federalism in India and Pakistan*, 40 COMMONWEALTH AND COMPAR. POL. 8, 23 (2002).

⁹⁴ Wilkinson, *supra* note 7, at 767.

⁹⁵ *Supra* note 10, at 263.

⁹⁶ *Id.*

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strengthening the consociational traits of India's federal system. These included increased quotas in education and government employment, the institutionalism of linguistic protections and reservation of seats in legislatures to the under-represented minorities.⁹⁷

The prominence of identity-based mobilisation further played a significant role in the political transformation of India. According to Wilkinson, politicians increasingly sought to woo newly mobilised minority and lower caste voters, thereby making India's electoral landscape more proportional than it ever was.⁹⁸ One major development strengthening political representation in the post-Nehru period was the implementation of the Mandal Commission recommendations, initially formulated in the 1980s and later revived in the 1990s, which introduced the implementation of quotas for Other Backward Classes ("OBC").⁹⁹ In addition to the existing 22.5% quotas for SCs and STs, the Commission proposed a 27% reservation in public sector employment and higher educational institutions to OBCs, cementing a shift towards broader representation.¹⁰⁰

Similarly, recruitment rules were revised to mandate that every seventh or eighth new recruit was from an SC or ST background, resulting in a gradual increase in the representation of these minority groups in central and state government employment during the late 1970s and 80s. As shown in the following table, there was a significant statistical change among the SC and STs, with the proportion ranging from 1.54% and 2.99% (1963), increased to 10.75% and 13.65% (1989), with respect to employment at the central government.¹⁰¹

⁹⁷ Mihir Desai, *The Need for Reservations: A Reply to Shourie and Others*, LOKAYAN BULLETIN 9, 32 (1990).

⁹⁸ Wilkinson, *supra* note 7, at 782.

⁹⁹ Ira N. Gang, Kunal Sen, Myeong-Su Yun, *Was the Mandal Commission Right? Living Standard Differences between Backward Classes and Other Social Groups in India*, 46(39) ECON. & POL. WKLY. 7, 33 (2008).

¹⁰⁰ *Id.*

¹⁰¹ Wilkinson, *supra* note 7, at 783.

TABLE 2 *Scheduled Caste and Scheduled Tribe Representation in Central Government Employment*

	1963		1989	
	Total Employees	Percentage of SC & ST Employees	Total Employees	Percentage of SC & ST Employees
Group I	18,176	1.54	61,176	10.75
Group II	29,482	2.99	86,018	13.65
Class III	1,007,415	8.90	2,224,212	19.37
Class IV	1,063,525	20.69	1,092,175	26.87

SOURCES: *Report of the Commissioner for Scheduled Caste and Scheduled Tribes for the Year 1962-63*, 12th report, part 1; and Tenth Lok Sabha, Committee on the Welfare of Scheduled Castes and Scheduled Tribes (1993-94), *Formulation, Implementation, and Monitoring of Reservation Policy*, 24th Report (New Delhi: Lok Sabha Secretariat, 1993).

NOTE: SC = Scheduled Caste; ST = Scheduled Tribe.

The move towards proportionality in government employment was accompanied by an increased emphasis on the proportional allocation of government resources. In the early 1980s, both central and state governments sharply increased the budget allocations for programs targeting SCs, STs, and Backward Castes. The proportion of government expenditure explicitly earmarked for the SCs and STs, rose as a result from 0.96% in 1970 to 7.77% in 1990.¹⁰²

The increased importance of minority veto in the post-Nehru period further influenced state governments in reversing earlier exclusions and reasserting the cultural and linguistic rights of minorities. For instance, during the 1980s and 1990s, the state governments of Bihar and UP reinstated Urdu as a second official language and granted Muslim religious schools the same official status as state-run schools.¹⁰³ Similarly, linguistic minorities in West Bengal, Kerala and Andhra Pradesh were provided with official recognition by their state governments.¹⁰⁴

¹⁰² Giridhar Goinango, *Constitutional Provisions for the Scheduled Castes and the Scheduled Tribes*, HIMALAYA PUBL'G 1, 14-15 (1992).

¹⁰³ *Id.*

¹⁰⁴ Wilkinson, *supra* note 7, at 784.

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The *Shah Bano* case was a significant episode that underscored the relevance of minority veto in shaping national legislation.¹⁰⁵ The Supreme Court's judgement which upheld the right of a divorced Muslim woman to claim maintenance under Section 125 of the Criminal Procedure Code was subsequently reversed due to political backlash for overriding certain interpretations of Muslim Personal Law.¹⁰⁶ Consequently, the Congress Government, facing pressure from the Muslim Personal Law Board and its Muslim support base, enacted the Muslim Women's (Protection of Rights on Divorce) Act 1986, effectively nullifying the Supreme Court judgement.¹⁰⁷ In this instance, the Muslim minority exercised its veto-right to restore the authority of the Muslim Personal Law Board in an aspect of personal law.¹⁰⁸

THE HINDUIZATION OF INDIA: THE USHERING AGE OF HINDU NATIONALISM

While the traverses in gaining territorial autonomy, and the rise of backward castes have increased,¹⁰⁹ the gradual erosion of representation for religious minorities, particularly Muslims, presents a troubling trend. This decline in representation is evident across various prominent institutions such as the Lok Sabha, the Cabinet and key political offices.¹¹⁰ While the forward caste's dominance had been restored by the rise of the elite-led Congress and BJP, especially with the context of representation in the Union Cabinet, there has been an equal under-representation of the Muslim minority; executive positions almost lacked such a provision for the former to apply for.¹¹¹ Backward classes particularly the Muslim

¹⁰⁵ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.

¹⁰⁶ ARUN THIRUVENGADAM ET AL. (EDS.), *COMPARATIVE CONSTITUTIONALISM IN SOUTH ASIA* 245–246 (Oxford University Press, 2017).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 240-41.

¹⁰⁹ *Supra* note 98.

¹¹⁰ Katherine Adeney et al., *Power-Sharing in the World's Largest Democracy: Informal Consociationalism in India (and Its Decline?)*, 25(4) SWISS POL. SCI. REV. 450, 463 (2019).

¹¹¹ Steven Ian Wilkinson, *India, Consociational Theory, and Ethnic Violence*, 40(5) ASIAN SURV. 767, 767 (2000).

minority have consistently been underrepresented in senior executive positions. The level of underrepresentation for Muslim minority has, however, had a progressive increment in the 1980s. The 16th Lok Sabha had the most significant contentious figure of not having a single Muslim in its Cabinet of 282 MPs. Such underrepresentation is often paralleled in the population of Buddhist, Sikh, and Christian minorities.¹¹² With the introduction of OBC reservations, there has been a significant improvement in their representation in administrative positions. This is contrasted to the community of Muslim minorities. The lack of representation quotas that are group-centric have impeded a fair representation in central government posts.¹¹³ The following table entails the statistics of the said representation in 1980 and 2006. The percentage of Muslim representation is at a meagre value; proportional to their population, it is valued at over 10%.

	1980	2006
Indian Administrative Services	2.99	3
Indian Police Services	2.85	4
Indian Foreign Services	NA	1.8
Total Central Services	6.80	NA

TABLE: REPRESENTATION OF MUSLIMS IN CENTRAL GOVERNMENT SERVICES IN 1980 AND 2006¹¹⁴

With respect to the tenet of segmental autonomy, that is not along the lines of territorial sovereignty, the enforceability of personal laws in relation to Muslims and Christians, effectuate the said criteria. However, it is pertinent to understand the lack of the same to the ethnic groups such as Sikhism, Buddhism or Jainism despite the latter coming under the umbrella constitutional interpretation of a 'Hindu'.¹¹⁵ Despite the present discourse, the current political backdrop of the country has taken a deliberative stance on the applicability of personal laws. While predicting the abolition of personal laws would be too superficially optimistic, the current wave of dissonance towards such laws are bringing a change in the political atmosphere of the country, therefore positing that Hindu nationalism

¹¹² Adeney, *supra* note 110, at 456.

¹¹³ *Id.*

¹¹⁴ *Id.* at 467.

¹¹⁵ *Id.*

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eroded support for religious accommodation. Thus, we find clear evidence of the progressively deteriorating representation of the largest religious minority group, i.e., the Muslims. Although Muslims have historically been underrepresented, their situation has deteriorated since the mid to late 1990s, that paralleled the rise of Hindu nationalism.¹¹⁶

In the late 19th century, Hindu Nationalism – a revivalist movement which aimed to modernise Hinduism – gained widespread recognition. This in turn has led to the marginalisation of the Muslim minority in contemporary India, perpetuating a vicious cycle of exclusion, discrimination and violence. The phenomenon of cow vigilantism, Ayodhya dispute and Gujarat riots fuelled by religious nationalism has further intensified the situation leading to a surge in hate crimes and mob violence against Muslims.¹¹⁷

A. THE CONTROVERSY SURROUNDING THE BABRI MASJID

Despite BJP's leading success in the political arena, the former's 1989 and 1991 triumphs were founded on two elements: an unapologetic stance that focused on revitalising nationalist and patriotic ideologies, coupled with exploiting the sentiments of the prevailing Hindu majority. Per their personal interpretation on mythology, the BJP centred its political campaign around Ayodhya, a site of deep religious significance.¹¹⁸ This narrative fuelled by public sentiment, resulted in the demolition of Babri Mosque on 6th December 1992 by a militant mob of the Hindu nationalists, sparking communal riots and provoking a Hindu-Muslim polarization.¹¹⁹ Consequently, the doctrine of Hindutva and Hindu majoritarianism rose to prominence, leading to the marginalization of the Muslim community, deprived of their sacred site.¹²⁰

¹¹⁶ *Id.*

¹¹⁷ Iqra Sarfraz et al., *Rise of Hindu Nationalism in Contemporary India: An Analysis of Muslim Marginalization*, 5(2) J. DEV. SOC. SCI. 218, 223 (2024).

¹¹⁸ Ramesh Thakur, *Ayodhya and the Politics of India's Secularism: A Double-Standards Discourse*, 33(7) ASIAN SURV. 645, 650 (1993).

¹¹⁹ *Id.* at 654.

¹²⁰ Sarfraz, *supra* note 470, at 221.

Thus, the grievances addressing the sense of Hinduism were manipulatively and politically exploited, leading to the dismal disarray of events in Ayodhya. The ultimate push that set the sequence of events in motion was the creeping malaise that cast its shadow over the democratic Constitution of India. Thus, it was argued by academic scholars that “*Principled dogmatism prevailed over expedient pragmatism*”.¹²¹ The price paid for the loss of the country’s constitutionalism was the mosque’s destruction in the most controversial way: wretched by a mob consisting of Hindu nationalists, who took the liberty to take law under their control and convenience.¹²² Hindus now aware of their ‘numerical superiority’ due to the leaders’ one-sided political agendas, have led to the imposition of a ‘lose-lose’ situation for Muslims. Such a position of “*self-imposed marginalization*” that leaves no room for bargaining, Muslims now lack the opportunity to influence any political outcome.¹²³

B. THE UNFOLDING OF THE GUJARAT RIOTS (2002)

The Gujarat riots that broke out in the wake of the 2002 Godhra incident was a notable event that garnered international attention to India.¹²⁴ For several weeks, there were deadly sectarian riots between Hindus and Muslims which resulted in the demise of thousands of civilians, particularly Muslims. The atrocities and human rights violations, including torture, rape, assault and abuses were documented by international agencies such as Amnesty International and Human Rights Watch. These organizations have reported the violence committed as a ‘pogrom’ and demonstrated the alleged involvement of state officials indicating a clear pattern of hindu majoritarian power.¹²⁵ The alleged involvement of the leaders of Hindu nationalism groups has created a distinct group identity between Hindus and Muslims that has impeded Gujarat society. Group identity is thus crucial to the nationalist party’s mobilization efforts as contemporary

¹²¹ Girilal Jain, *Beyond Ayodhya's Watershed: Muslims Have to Reckon with Realities*, THE TIMES OF INDIA, Dec. 14, 1992.

¹²² *Id.*

¹²³ *Supra* note 84.

¹²⁴ Mohammad Jamil Akhtar, *Babri Masjid: A Tale Untold* 173 (1997).

¹²⁵ *Supra* note 45.

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democratic systems enable capitalism to exacerbate social problems inside communities.¹²⁶

The Godhra riots were far more than an isolated incident of violence brought on by a disagreement within the community. Rather, they were elements of a wider scheme to purge Muslims from the Gujarati populace as a whole. It has thus been widely argued that the purpose of this “*Hindutva experiment*” is to create communal violence and tensions between Muslims and Hindus.¹²⁷

**C. THE INCREASING POLARISATION OF POLITICAL AND RELIGION
RHETORIC IN INDIA**

The rise of Hindutva ideology and religious polarization of the society can be traced back to the landslide victory of 2014 elections, which was marked by the propagators of Hindu nationalism and a growing anti-Muslim sentiment. During the elective campaigns, political leaders of Hindu nationalist groups pledged to restore ‘*Akhand Bharat*’ driven by their aim to present the Hindu nation as the best nation.¹²⁸ One of the major steps taken was the repeal of Article 370-A, along with the associated Article 35A of the Indian Constitution, which had granted special status to the Muslim dominated region of Jammu and Kashmir. Although officially justified on grounds of national integration and economic development, the abrogation of the constitutional status proved to be prejudicial to the region’s socio-political sentiments.¹²⁹ These concerns drew international attention with the United Nations Human Rights Council warning that the constitutional changes could curtail the political participation of Muslims and potentially lead to discrimination in employment and land ownership.¹³⁰ While the Central Government maintained that the repeal

¹²⁶ *Supra* note 96, at 647.

¹²⁷ Tracy Wilichowski, *Premeditated Causes of the 2002 Gujarat Pogrom: A Comprehensive Analysis of Contributing Factors that Led to the Manifestation of the Riots*, 7 OSHKOSH SCHOLAR 128, 139 (2020).

¹²⁸ Sarfraz, *supra* note 117, at 222.

¹²⁹ *Id.*

¹³⁰ Press Release, United Nations Human Rights Office of the High Commissioner, India: UN experts say Jammu and Kashmir changes risk undermining minorities’ rights (Feb 18,

was intended to benefit all citizens equally,¹³¹ its immediate and disproportionate consequences for the region's Muslim-majority population suggested the contrary. The region witnessed a rise in security measures entailing curfews, restrictions of communication, as well as augmentation of the military forces which were closely associated with the political transformations.¹³² These arbitrary measures not only affected the social life of the citizens but also incited cases of human rights violations, further exacerbating divisions in an already polarized region.¹³³

Moreover, the Indian government has passed strict laws to prohibit cow slaughter and beef consumption. Many Muslims have been lynched by Hindutva mobs on the allegation of beef consumption.¹³⁴ The report, '*Violent Cow Protection in India: Vigilante Groups Attack Minorities*', specifically entails the Hindutva propaganda spurring vigilantism against beef consumption and those engaged in cattle trade. India, in consonance with its traditional normative ideology on sacredness of cows, imposed norms on restricting the slaughter of cows. In February 2019, the government announced a national commission for cow protection which in turn disproportionality harmed the livelihood of minority communities.¹³⁵

Hindutva ideologies gaining traction, through its legitimization and the consequent indoctrination of the normative theology among the masses has subsequently fuelled sentiments lining to an anti-Muslim communal hatred. The theology of '*saffronization*' unfortunately inclines India to

2021), <https://www.ohchr.org/en/press-releases/2021/02/india-un-experts-say-jammu-and-kashmir-changes-risk-undermining-minorities?LangID=E&NewsID=26758>.

¹³¹ Alina Fayaz, *The Abrogation of Article 370 and 35A in Kashmir: The Role of the UNSC*, MODERN DIPLOMACY, (Aug. 3, 2024), <https://modern diplomacy.eu/2024/08/03/the-abrogation-of-article-370-and-35a-in-kashmir-the-role-of-the-unsc/>.

¹³² Jon Lunn, *Kashmir: The effects of revoking Article 370*, House of Commons Library, (Aug.8, 2019), House of Commons Library, <https://commonslibrary.parliament.uk/kashmir-the-effects-of-revoking-article-370/>.

¹³³ *Id.*

¹³⁴ Sarfraz, *supra* note 117, at 222.

¹³⁵ Human Rights Watch, *India: Vigilante 'Cow Protection' Groups Attack Minorities*, HUMAN RIGHTS WATCH (Feb. 18, 2019, 10:30 PM EST), <https://www.hrw.org/news/2019/02/19/india-vigilante-cow-protection-groups-attack-minorities>.

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become a prominent '*Hindu-State*' lest the country does not idly lay back these religion-based political ideologies.¹³⁶ This trajectory risks cementing the structural marginalization of Muslims, normalising the discrimination against such minority communities. It is thus the need of the hour to confront the rising tide of religious polarization and re-direct India's constitutional commitment to secularism and pluralism in order to safeguard the nation's democratic fabric.

**THE PUZZLING DILEMMA OF THE QUID PRO QUO
RELATION BETWEEN CONSOCIATIONALISM AND RISING
ETHNIC VIOLENCE**

The present contribution clearly illustrates that India's consociational policies have historically been coupled with higher levels of violence between ethnic groups. While there does exist a possibility of a coincidence in the relation of consociationalism and that of ethnic violence, however the explanation for the same seems rather superfluous.¹³⁷ Several mechanisms exist that can correlate the proportional relation between the theory and ethnic violence.

First, there is a fundamental flaw in the presumption that merely allocating a share of power among each of the sub-divided ethnic groups would leave the latter satisfied. The multidimensional nature and oppositional forces working against this structure are too complex because such settlements of power are bound to leave out a few groups. The multi-dimensionality exists due to instances wherein a single member could be part of more than one ethnic group, and oppositional due to the fact that a person's ethnicity is often connected with the latter's opposition to another ethnic group and the former's control over political power or economic resources.¹³⁸ This is an essential part of understanding the relation in contention because even if the theory ensures an even distribution of the resources of a state across all the groups, the same tends to become an uneven distribution within each of the groups. Take India for example; state benefits directed towards

¹³⁶ *Supra* note 49.

¹³⁷ Wilkinson, *supra* note 111, at 787.

¹³⁸ FREDERIK BARTH, *ETHNIC GROUPS AND BOUNDARIES: THE SOCIAL ORGANIZATION OF CULTURE DIFFERENCE* 14 (Waveland Press, 1998).

the priorly classified 'untouchables' often end up being accumulated within the so-called wealthier/well-educated sub-castes, that include the Mahars (West), Chamars (North), and the Malas (South).¹³⁹ Another instance of the same can be drawn to the fact wherein, a majority of the benefits often enrich only a few of the sub-castes within the OBCs, such as Yadavs, rather than being equally distributed to the Koeris and Kurmis.¹⁴⁰

It has been acknowledged by Lijphart that the cycle of reforming and subdividing of ethnic groups emerged as a thaw to a successful settlement using the theory.¹⁴¹ A rather superficial solution of conducting regular elections through the PR system was proposed, however, the technicalities of such a conduction on a larger scale was left unanswered. While this solution seems favourable and feasible, in practice however, it remains dicey whether the groups that are currently benefitting from such quotas and reservations would be willing to sacrifice a portion of their share in power to accommodate newer ethnic groups. This uncertainty in such self-sacrifice is further aggravated by the method of 'minority veto', that allows the group receiving the disproportionate amount of benefits, to merely stop the emerging group from getting their rightful share.¹⁴²

The *second* method of the theory invigorating an increased violence is its fallacy in understanding the influential role political leaders have over their voters,¹⁴³ and their ability in convincing the former in following through the deals they are brokering. Violence has further occurred when such leaders suffer a lapse in judging the opposition belonging to their own communities to consociational benefits rather than focussing on cultural issues. For example, the 1989 announcement in UP that declared Urdu as the second official language for the state, sparked off an intense anti-Muslim hatred and riots in the district of Budaun that injured over 200 people and caused the deaths of 26 people.¹⁴⁴ Parallelling the same, when Chief Minister Moily of Karnataka promulgated a nightly-Urdu news

¹³⁹ *Supra* note at 39.

¹⁴⁰ *Id.* at 788.

¹⁴¹ Arend Lijphart, *The Puzzle of Indian Democracy: A Consociational Interpretation*, 90 AM. POL. SCI. REV. 258, 263 (1996).

¹⁴² Wilkinson, *supra* note 111, at 789.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 790.

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channel, the same provoked a similar anti-Muslim riot, sparked by the Kannada-speaking group.¹⁴⁵

The *third* and final reason for the failure of the theory to impede violence among the different ethnic groups is its hopeful assumption that the leaders representing these groups would take a moderate and accommodative approach towards each other. Evidence however echoes the sad contradictory incentives of such leaders. A reason for the same has been propounded by Donald Horowitz, who stated that political leaders are often prone to attacks from other opposing parties who would accuse the former of brokering a prejudicial deal that would in a manner sell their group out for the leader's successful takeover of power.¹⁴⁶

Another reason for this extremity in demands by the leaders is due to their worrying stance on the fact that the people of their group would vote along lines that do not deal with the ethnic disparity or they would vote the opposing ethnic party to power.¹⁴⁷ The evidentiary value of the same has been highly cited in the case of Indian politicians. Initially, the electorate in India was overwhelmingly made up of the upper-caste community.¹⁴⁸ Now, the same category of community forms about 10-15% of the voters. Thereafter, politicians were forced to change their campaigning strategies in order to ensure mobilisation of voters within their own group and prevent defections. For the same, the tendency to promulgate an anti-Muslim wedge such as the former's practice of cow slaughter [which Hindus regard as sacred], among others.¹⁴⁹ These issues thereafter form a driving force in rallying voters to that particular party. Such strategies have however sadly deepened the division between Hindus and Muslims in the nation.

¹⁴⁵ *Id.*

¹⁴⁶ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 571-87 (Berkeley: University of California Press, 1985).

¹⁴⁷ Steven Ian Wilkinson, *India, Consociational Theory, and Ethnic Violence*, 40(5) *ASIAN SURV.* 767, 790 (2000).

¹⁴⁸ HAROLD A. GOULD, *GRASS ROOTS POLITICS IN INDIA: A CENTURY OF POLITICAL EVOLUTION IN FAIZABAD DISTRICT* 52 (Oxford University Press, 1994).

¹⁴⁹ Wilkinson, *supra* note 111, at 790.

TIME TO TURN THE TIDE ON THE CASUISTRY OF DILEMMIC CONSOCIATIONALISM

As previously propounded by Lijphart, minority veto rights in consonance with a power sharing arrangement create the necessary balance required to effectuate a stable democracy. The current part of the paper would entail the interrelation between the pillar of minority veto and the remaining three pillars of the theory and thereafter, make its humble attempt in possible recommendatory policies and considerations for the future design of the former mechanism.

A. PROPORTIONALITY, FEDERAL STRUCTURE AND GRAND COALITION

The mechanism of minority veto can be incorporated in both the types of legislatures; unicameralist and bicameralist form of legislatures. With respect to the PR system, the same must be inculcated in a manner that ensures every group is represented, all the while, restricting the chances of outbidding using ethnic lines.¹⁵⁰ A federal system lays the groundwork for a stable electoral system especially concerning instances wherein veto rights can be enforced or revoked. Furthering the same, federalism prevents the same by presenting a legislative mechanism that nips the instance of a unilateral decision by taking sensitive issues off the table for legislative deliberations and thereafter gives the power for the same to each respective ethnic group. Drawing a conclusion from the nation of Northern Ireland, it has been argued that the lack of a federal system would lead to abuse of the veto system.¹⁵¹

The PR system in place would ensure no underrepresentation of a particular group in all stages of governance especially the stage of legislation. Adopting a more restrictive approach to veto rights would allow the same to be in moderation.¹⁵²

B. WHO WOULD BE THE VETO HOLDER?

¹⁵⁰ Devin Haymond, *Minority Vetoes in Consociational Legislatures: Ultimately Weaponisation?* 6 INDIANA J. CONST. DESIGN 1, 22 (2020).

¹⁵¹ *Id.*

¹⁵² *Id.* at 23.

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There exists no straightjacket formula for determining the person/group who would be acquiring the power to veto rights.¹⁵³ The determination of the same is context-specific in keeping with the backdrop of the ongoing societal conflict. The groups that receive the privilege to be part of negotiations concerning power-sharing arrangements, would explicitly prefer a corporate style of veto power that would be shared within the conflicting groups. If the corporate approach is taken, every minor group would be part of the power-sharing system and a stringent intra-group system for voting must be in place. The same can be paralleled to the entity veto system of Bosnia.¹⁵⁴ In Bosnia, the entities that hold direct representative authority of their state-based institution, form the primary level of overseeing and authorising funds and resources along with the legitimisation and enforcement of all political and civil rights.¹⁵⁵ The same thereafter includes possession of the power to veto over state policies.

C. ‘VITAL’ INTERESTS

It is essential to understand if vital interests of a community are to be self-determined or pre-determined.¹⁵⁶ Placing restriction on domains wherein veto rights can be invoked is a necessity to ensure no abuse of the said power. However, it is of paramount importance to have a clear-cut discussion on the subject matters that would be left out of the domain dealing with veto power.

The subject matters that are to be considered as “vital interests” are not determined by a pre-established template; it is to be done in consonance with the persisting political situation of the nation. Thus, the drafting of the said list must be done while ensuring every political leader is equally involved in the determination of vital interests. A system of including a

¹⁵³ *Id.*

¹⁵⁴ Wilkinson, *supra* note 111, at 787.

¹⁵⁵ Birgit Bahtic-Kunrath, *Of Veto Payers and Entity-Voting: Institutional Gridlock in the Bosnian Reform Process*, 39(6) NAT. PAPERS 899, 899 (2011).

¹⁵⁶ Haymond, *supra* note 150, at 24.

justificatory clause would better effectuate the legitimacy of the process.¹⁵⁷ The system is in place in the country of Belgium that requires every party to have an open discussion on the possible harm a particular legislation could cause on a vital interest. This adds a further level of political stabilisation by opening a channel of understanding and communication between the differing ethnic groups.¹⁵⁸

D. REVIEWAL PROCESS ON THE IMPACT OVER ‘VITAL’ INTERESTS

Consociationalism paves the path for a collaborative and consensus-based deliberative mechanism over the passing of legislation. Thus, a process of meaningful collaboration and dialogue makes it easier to prevent the implementation of prejudicial legislation. An illustrious example of the same can be seen in Bosnia, wherein, an institution of a joint commission occurs when the right to veto is invoked. If the said commission is unable to arrive at a conclusion, the matter is then sent to the constitutional court for review.¹⁵⁹

LESSONS TO TAKE HOME: THE COUNTRY OF NETHERLANDS

Netherlands has quite often been cited as a textbook example of successful consociationalism by various scholars.¹⁶⁰ Much like India, Netherlands consists of a deeply entrenched society divided along religious, ideological and social lines. In the early 20th century, the country adopted the power sharing model to administer these divisions effectively. By embodying the four tenets of the consociational model, Netherlands was successful in its attempt to maintain social cohesion and political stability. Over time, social cleavages weakened as Dutch elites ensured equal representation and a

¹⁵⁷ Wilkinson, *supra* note 111, at 792 (2000); Devin Haymond, *Minority Vetoes in Consociational Legislatures: Ultimately Weaponisation?*, 6 INDIANA J. CONST. DESIGN 1, 24 (2020).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 24.

¹⁶⁰ Bassel F. Salloukh, *The State of Consociationalism in Lebanon*, 30(1) NATIONALISM & ETHNIC POL. 8-27, (2023).

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stake in governance for various groups, solidifying lasting unity.¹⁶¹ This chapter will examine key factors that explain the Netherlands' nearly "perfect" consociationalism implementation. A thorough analysis of these factors will provide for a nuanced understanding of Netherlands ability to effectively manage and resolve conflicts by balancing diverse interests in a pluralistic society.

The first key factor is the non-antagonistic nature of the Dutch societal groups despite their diverse backgrounds.¹⁶² Though there was tension between the Dutch Calvinists and Catholics, rooted in the fight for independence against Spanish Catholics, these tensions did not escalate into deep seated antagonism for several reasons. Despite initial restrictions placed on the Catholics, the Dutch gradually became tolerant of different religions. Catholicism was no longer perceived as a crime and private worship and services were tolerated. Through persistent political battles, the Catholics gradually secured their religious and political freedom. The economic interdependence between the South and the rest of the country further prevented the Catholic population from becoming estranged from the greater Dutch nation. Additionally, the Catholic elites, predominantly clergymen, were guided by Church doctrine which did not condone revolution or secession. This stopped tensions from becoming truly antagonistic.¹⁶³ Another aspect which accounts for the lack of antagonistic historical narratives is the tradition of compromise and acceptance of diversity fostered by the Dutch political actors. The acceptance of different religious groups along with their shared experiences such as the battle against the Spanish imposition, a common monarch and a common language all played a role in unifying the very diverse Dutch society.¹⁶⁴

¹⁶¹ Pelle Berrends, *De-Consociational Transition: A Comparison of Three Consociational Democracies*, (unpublished M.A, thesis on file with the Major Papers, Univ. of Windsor) (2020).

¹⁶² *Id.* at 6.

¹⁶³ Rudy B. Andeweg, *Consociationalism in the Low Countries: Comparing the Dutch and Belgian Experience*, 25(4) SWISS POL. SCI. REV., 409-10 (2019).

¹⁶⁴ AREND LIJPHART, *THE POLITICS OF ACCOMMODATION: PLURALISM AND DEMOCRACY IN THE NETHERLANDS 16-18* (University of California Press, 2nd ed., 1975).

Second, the ability of the Dutch elites to work together prudently sheds light on the political culture within the system which contributed to diminishing tensions within the country.¹⁶⁵ In the words of Lijphart, “*it is the conscious decision of the elites to work together and overcome their differences for the good of society that keeps a consociational democracy going.*”¹⁶⁶ In the Dutch consociationalism system, majoritarian rule was avoided in the favour of consensus and pragmatism. This approach can be attributed in the formation of surplus majority coalition governments, designed to achieve broad consensus and in the technocratic nature of Dutch coalitions which ensured prudent governance. Additionally, the pillarization of Dutch society through backroom deals and inclusive committees reinforced the importance of inclusive decision making thereby reflecting the country’s excellent elite leadership.¹⁶⁷

The third factor to be analysed is the existence of internal and external loads that put significant pressure on the political system. This factor finds its footings in Lijphart’s research, who noted that significant pressures on the system arising from controversial variables can affect elite leadership.¹⁶⁸ This in turn can result in an increasingly divided society. The success of the consociational regime in the Netherlands can be attributed to the latter’s lack of major loads straining the system. Despite the occasional political tensions, Netherlands managed to avoid major disruptions due to its strong unifying symbol and effective cooperation and compromise among elites.¹⁶⁹ A notable exception to this stability was Princess Irene’s conversion to Catholicism controversy which divided the society quite significantly.¹⁷⁰ Tensions arose between the religious blocs with the Catholics supporting the conversion which faced strong opposition from the Calvinists. To resolve the crisis, the Dutch utilized the tenet of grand coalition through the institution of an ad hoc council. Although the Labour Party was not formally included in this council, the council maintained

¹⁶⁵ Saurugger, *supra* note 4, at 7.

¹⁶⁶ *Id.* at 37.

¹⁶⁷ Erik Jones, *The Decline and Fall of Three Hegemonic Parties in Europe*, 37(1) SAIS REV. INT. AFFAIRS 79 (2017).

¹⁶⁸ Arend Lijphart, *Consociational Democracy*, 21(2) WORLD POL., 207-225 (1969).

¹⁶⁹ Rudy B. Andeweg, *Executive-Legislative Relations in the Netherlands: Consecutive and Coexisting Patterns*, 17(2) LEGIS. STUD. Q. 165-66 (1992).

¹⁷⁰ Saurugger, *supra* note 4 at 53.

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informal communication with the Labour leadership. This approach demonstrated the elite's prudent leadership to manage conflicts effectively.¹⁷¹

When drawing a comparative analysis with India, several parallels and contrasts on the application of this theory are brought forth. While both countries adopted consociationalism to manage their deeply divided societies, their outcomes have varied due to their unique historical and social backgrounds. Though India lacks a formal recognition as a consociational country, it has implemented a form of power sharing that resonates with consociational principles.

However, unlike the Netherlands where social cleavages weakened over time, India continues to grapple with persistent divisions. While compromise and tolerance were fostered among the Dutch elites to mitigate divisions, India's political landscape reflects majoritarian tendencies, particularly with the rise of Hindutva. This has in turn strained the country's democratic fabric. Furthermore, the Netherlands benefited from non-antagonistic historical narratives and prudent leadership of the elites which diminished tensions and facilitated societal cohesions. The country was also fortunate in avoiding a significant crisis that could have strained its consociational system. India however has faced numerous challenges including communal violence, regional disparities and socio-ethnic conflicts. These "*loads*" on the latter's political system have questioned the resilience of its power sharing arrangements and contributed to a destabilising society.

CONCLUDING THE PARADOX: WHERE THEORY MEETS PRACTICE

Almost five decades since the debut of the theory of consociationalism, the former has undergone tides of re-defining interpretations, continually sparking a growing interest among academicians. However, the popularity surrounding the same is less a reflection to the merits arising from the theory, than the coherent lack in other alternatives in dealing with ethnic conflicts. The normative orientation of the theory basically entails power-

¹⁷¹ *Id.*

sharing policies among different cultural groups. However, as has been priorly dealt with, such institutional policy changes lead to immobilisation of the process of making decisions and further makes the latter prone to misuse. This misuse often occurs due to the varied articulation of a 'better future' imagined by the different ethnic groups, and an inability to accommodate the same. This becomes the biggest fallacy of the theory, as it fails to explain the former.

The paradoxical nature of the merits of this theory is understood by the comprehensive literature detailed in the present contribution with the backdrop of Indian society, and that of Netherlands. It is pertinent to note that in the Netherlands, the theory promulgated the 'perfect' case study. The four pillars of the theory worked in favour of the ethnically different society of the Netherlands. However, there existed no prior antagonistic historical narrative between the groups thereafter paving way for an easier accommodative attitude to a power-sharing arrangement. This was not the case in India.

There existed severe tensions between the ethnic groups in India, with its historicity tracing decades before British Rule even began. The noteworthy antagonisms in India thereafter only deepened the strains between the elites and other groups, thus leading to a destabilised society. The leadership of the elites only exacerbated these tensions. Further, India is presently highly susceptible to the various political battles its neighbours impose on the country leaving the former's system destabilised to a point beyond repair. Thus, the presence of consociational policies have only been associated with an increase in ethnic violence. The rudimentary one-dimensional interpretation of the theory fails to incorporate the dynamic, multi-dimensional and rather oppositional-based ethnic identities of Indian society. The case of India's consociationalism also clearly evidentiates the various dangers that would arise from having informal power-sharing arrangements that lack a constitutional backing. An extension to this danger is the probability of it actually occurring, but with the consensus of the elite and a minute percent of minority veto or its complete lack thereof.

Ultimately, the paper presents certain areas of research necessitated to further understand the failure of the consociationalism theory in India. An essential research tangent includes assessing this theory at the state-level.

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This is because the intricacies involving religious minorities and the varying minority groups are seen at a better prominence, thereby shedding more light on elitist dominance.

The consequences of the growing Hindu nationalistic ideals are at the moment too complex to completely comprehend. The utmost comprehensible outcome is the grave threat the former poses in preventing the representation of minority groups within the various constituencies. The increase in exclusionary '*Hindu-istic*' policies jeopardises the minority rights and linguistic federal structures of the country's democracy. This is when minority veto power could play an essential role, if given the appropriate incentives. The design of such a power rests on its context, and thereafter there exists no straight-jacket formula for it. There exists a thin line between the rightful use of such veto power, and the weaponisation of the same.

Thus, demarcation of the same, coupled with intensive collaborative-intergroup dialogue is necessitated for an advantageous policy-making mechanism, rather than the rudimentary application of the consociationalism theory with respect to India's deep communal and ethnic divisions.