

PART III

Multiculturalism in the
“New” Commonwealth

Multiculturalism in India

An Exception?

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Theories of multiculturalism have been based substantially on the experience of Western democracies since the 1970s. However, several countries in the British Commonwealth have long-standing practices of ethno-religious pluralism that predate the establishment of liberal-democratic institutions. India is a key example. Its policies of group rights include legal pluralism in religious family law (Hindu, Muslim, Christian, Parsi), as well as affirmative action in the form of quotas in legislatures, government jobs, and educational institutions for caste and tribal minorities dating back to the nineteenth century. With territorial autonomy for several linguistic and tribal groups, India resembles a multinational federation in its institutional framework. India's Constitution of 1950 has been hailed as a prescient model of multicultural accommodation, ahead of its times in instituting the cultural rights of minorities and affirmative action for historically disadvantaged groups within a broadly liberal-democratic framework.¹ The subsequent development of a multinational federal framework from the 1950s is regarded as an exception to the unitary, centralized nation-state framework adopted by many postcolonial states.²

While concurring that India is a key case for evaluating multiculturalism, this chapter argues that claims of Indian exceptionalism need to be qualified. Focusing on the subset of group-differentiated rights, minority rights, and affirmative action, I elaborate three main claims. First, while accommodating some multicultural provisions, the Indian Constitution inaugurated a shift from consociationalism to affirmative action as the overarching framework of group-differentiated rights. Relative to the late colonial state, constitution-making marked a moment of containment in the long career of group rights in India. Second, the Indian

Constitution embodies two distinct approaches to the accommodation of group-differentiated rights, which might roughly be termed integrationist and restricted multicultural. The former underpinned provisions for quotas for ex-Untouchable and tribal groups; the latter is embodied in provisions of minority cultural protection and religious family laws. Third, the restricted multicultural approach has remained undersupported in India’s constitutional vision. In particular, because of the confluence of liberal and nationalist concerns, there exists a normative deficit with regard to the protection of cultural *difference* and minority practices. Most acute in the case of religious minorities, this is the case to an extent for all minorities, whether defined by religion, language, caste, or tribe.

The normative deficit of multiculturalism at India’s founding moment has persisted over time and has been politically influential. Since the promulgation of the Constitution in 1950, group-differentiated rights have been augmented, without, however, a concomitant elaboration of their rationale by policy-makers in terms of their society-wide benefits. This in turn has left minorities and disadvantaged groups more vulnerable to majoritarian resentment and backlash. Deficiencies in justifications of group-differentiated rights dating back to constitution-making have been a contributing factor in the ascendance of the Hindu Right.

Does the Indian example then suggest that liberal and nationalist frameworks inherently lack the normative-ideological resources for the accommodation of differential treatment, in particular, minority rights, as postcolonial theorists have suggested?³ While Indian constitutional and parliamentary debates provide some support for this view, these also suggest that such claims are overstated. In Indian policy debates, considerations of secularism, religious freedom and social justice have been construed, often appropriately, as consistent with group-differentiated rights.⁴ The main challenge for the accommodation of multicultural minority rights in India, as in many other countries, stems from policy-makers’ overly narrow understandings of the requirements of national unity. The long shadow of the country’s partition along religious lines in 1947 has limited political imagination in India regarding the accommodation of cultural difference. Furthermore, in India, as in many other countries in Asia and Africa, it is not so much liberal norms and institutions but their *weakness*—lack of support for rule of law, civil and political liberties for individuals in Indian liberal ideas—for instance, that renders minorities vulnerable to attack and discrimination.⁵

A note on terminology is in order at the outset. First, it might be asked whether the concept of multiculturalism is adequate for capturing the deep, multilevel diversity of the kind encountered in India and other countries of Asia and Africa. Multiculturalism can suggest a flattening of difference, a reduction of multiform diversity to a single level, more suited to the recent immigrant experience of North America and Europe, than to the long histories of pluralism in Asia, Africa, and the Middle East. It is also tilted toward *liberal* approaches to dealing with diversity, obscuring ways of dealing with difference in nonliberal traditions and societies

Terms such as “pluralism” might be preferred to denote the accommodation of difference in non-Western contexts. While these challenges have merit, multiculturalism remains a useful category for comparative analysis—for bringing non-Western experiences of group-differentiated rights into conversation with Western debates on multiculturalism—and is used as such here, with cognizance of its limits.

CHANGING FRAMES OF GROUP DIFFERENCE: FROM “MINORITY” TO “BACKWARD”

Two contrasting views of the Indian Constitution have been influential: that it represents a prescient model of multicultural accommodation within a liberal framework,⁶ and that it marked a sacrifice of minority rights at the altar of the nation at independence.⁷ Both views need to be nuanced. As I have detailed elsewhere, constitution-making (1946–49), which marked the formal institution of a liberal-democratic state, was also a moment of containment in the long career of group rights in India.⁸ Nevertheless, unlike in many other postcolonial states, some minority rights were granted constitutional recognition, as were quotas for disadvantaged groups—the Indian Constitution was the earliest to institute affirmative action policies.

The Indian Constitution represented a cutback on minority representation provisions that had characterized both British policy and group demands in colonial India. Group-based representation in colonial legislatures dates back to the late nineteenth century, with Indians included in the representative institutions of the Raj as members of particular groups.⁹ Special representation provisions (separate electorates, weightage, nomination) had expanded over the first half of the twentieth century to a range of groups, including most prominently Muslims and other religious minorities, as well as Untouchables (then called the Depressed Classes). During constitution-making, these came to be limited in several respects, as the paradigm for group-differentiated rights was comprehensively recast from consociationalism to affirmative action in the transition from colonial rule. The starkest case of retrenchment was to be found in mechanisms for guaranteed representation of religious minorities in legislatures and government employment, which came to be abolished. However, consociational type provisions were rejected in the case of Untouchables (Scheduled Castes or Dalits) as well.

To take some examples, initial constitutional proposals and the draft Constitution of 1948 included provisions for legislative quotas for religious minorities and Depressed classes under joint electorates (separate electorates were rejected) and recognized the “desirability of representation of minorities in the Cabinet.”¹⁰ By 1949, each of these provisions had come to be restricted mainly to the Scheduled Castes and Scheduled Tribes and some temporary provisions for Anglo Indians.¹¹ Cutback can also be observed, albeit to a much lesser extent, in the case

of the "backward classes." Babasaheb Dr. Bhimrao Ambedkar's Depressed Class organizations' demand for separate electorates and guaranteed representation in the executive had been rejected in early deliberations, but the draft Constitution of 1948 included an Instrument of Instruction to the president and provincial governors regarding the desirability of representation of minorities in the Cabinet.¹² In the final stages of tidying up provisions in 1949, this provision was also deleted by the Constituent Assembly.¹³

The cutback in minority rights during Indian constitution-making was not limited to special representation provisions alone. Some have argued that the Indian Constitution marks not so much a containment of minority rights, as a shift from special representation provisions to cultural and educational rights of minorities.¹⁴ It is true that the religious, cultural, and educational freedoms of minorities are protected in the text of the Indian Constitution as justiciable fundamental rights for individuals as well as groups (see Articles 25, 26, 29, and 30). My reading, however, suggests that minority cultural rights too came to be attenuated during constitution-making, albeit much less drastically than political representation provisions. The wording of cultural rights provisions was changed, diluting the focus on religious minorities; furthermore, the protection of minority languages and scripts would be a matter for individual and community initiative.¹⁵ The constitution-makers declined to stipulate any obligation on the part of the state to preserve minority cultures, in contrast to the "backward classes," where the state's duties were written into the Constitution.¹⁶ With regard to federal provisions, state rights also came to be limited after the partition of the country to create Pakistan in 1947. For instance, residuary powers earlier promised to the units, came to reside with the Central government.¹⁷ State rights also came to be curtailed during constitution-making in several other areas, including the Emergency provisions allowing for the president to assume the functions of the state government in the event of constitutional breakdown.¹⁸

Does the Indian case represent a sacrifice of minority rights at the altar of the nation at independence, as in many other postcolonial contexts? Indian constitution-making offers a more complex story. Although Partition undeniably denuded religious minorities of constitutional protections,¹⁹ the Constitution is not a majoritarian document. Against the demands of majoritarian nationalists, the religious, cultural, and educational rights of minorities were included in forms that were consonant with the concerns of minority representatives. For instance, a broad definition of the right to freedom of religion was adopted, including the right to "propagate" religion pressed for by several Christian representatives. Furthermore, in keeping with the wishes of several minority representatives, the state was not barred from aiding educational institutions that imparted religious instruction, despite objections by many staunch secularists. In the important area of religious family law, the demands of secularists and nationalists for a uniform civil code to supplant the different religious laws that governed family matters in colonial India

were rejected.²⁰ In matters concerning marriage, divorce, inheritance, and adoption, Muslims, Christians, and Parsis were to be governed by their respective religious personal laws, which were constitutionally protected by rights to religious freedom.

A majoritarian reading of the Indian Constitution is also inaccurate when we turn to examine provisions for historically disadvantaged groups, the Untouchables and tribal populations. Here, the Indian Constitution recognized that the national community was not homogeneous, and that state action was required to tackle entrenched socioeconomic inequalities. From the early stages of constitutional deliberations, committee reports sought to emphasize the need for special treatment of the so-called backward groups.²¹ The final constitutional draft included a range of affirmative action provisions, including mandatory legislative quotas, provisions enabling employment and educational quotas for the Scheduled Castes and Scheduled Tribes, as well as an undefined category of Other Backward Classes, expanding on colonial provision in some areas. In the case of Adivasis/Scheduled Tribes, there was some acknowledgement of cultural distinctiveness. Provisions included an element of self-government and sought to “balance improvement of their condition and a degree of assimilation with preservation of their distinctiveness and a measure of autonomy.”²² Overall, group-differentiated rights in the Indian Constitution are principally addressed to difference deriving from disadvantage. Differential treatment was envisaged for most part as a temporary measure for tackling socioeconomic disabilities and reducing intergroup difference over time, not as a permanent provision for the recognition of cultural difference.

The change in the regime of group rights during its passage from colonial to independent India was encapsulated in the declining fortunes of the term “minority” during constitution-making. At the start of the Constituent Assembly’s deliberations in 1946, the representatives of most groups claiming special provisions emphasized that their group was a minority of some kind. This appears to have been a response to the colonial institutional framework where groups designated as minorities were the chief beneficiaries of special treatment. For instance, representatives of Untouchables called themselves “political minorities” on account of their historical exclusion from the governing structures of the country. In official categorization, however, Untouchables were removed from the purview of the term “minority.” An amendment was adopted defining the term more narrowly so as to exclude the Scheduled Castes from its ambit, as well as deeming them part of the Hindu community.²³ This reflected nationalist dislike of the term “minority” and a desire to restrict its usage, as well as an anxiety about the separation of the Untouchables from the Hindu community that, it was feared, their categorization as minorities would encourage. Whether Untouchables ought to be distinguished from the Hindu community for purposes of representation had been a sensitive point for nationalists in the decades preceding independence, with Ambedkar and Gandhi emblematic of the adversarial positions in this debate. By the close of the Constituent Assembly debates in 1949, the term “backward” had become

the favored designation to denote a group's entitlement to special treatment. Representatives favoring quotas for religious minorities now sought to establish that there were "backward" peoples among Muslims, Christians, and Sikhs.²⁴ The decline in the fortunes of the term "minority" during constitution-making, and corresponding popularity of the term "backward" classes, encapsulated the transformation that the regime of group-differentiated rights underwent during its passage from colonial to independent India.

APPROACHES TO GROUP-DIFFERENTIATED RIGHTS: INTEGRATIONIST AND LIMITED MULTICULTURAL

On closer examination, three broad positions on group rights in the Constituent Assembly debates emerge: opposition to all group-differentiated rights, which encompassed assimilationist and integrationist positions (these were distinct); support for maximal group rights, which can be termed multinational; and an intermediate, restricted multicultural position of support for some group rights. The classification is heuristic: individuals and parties moved from one position to another over time and across issue areas.²⁵ For instance, initially, minority parties such as the Muslim League, the Akalis, and the Scheduled Caste Federation, favored multinational policies; by the end, most had moved to restricted multicultural policies.

Constitutional outcomes varied across the different areas of group-differentiated rights. On quotas (termed "political safeguards" or "reservations") for religious minorities as well as ex-Untouchables and tribals (Scheduled Castes and Scheduled Tribes in official usage) in legislatures and government employment, the integrationist position won. On the cultural rights of religious minorities (including religious family laws), and territorial autonomy for linguistic minorities and tribal populations, a restricted multicultural position was embodied in the constitution. Both the integrationist and restricted multicultural positions represented a cutback on the multinational provisions that had characterized colonial constitutionalism and minority demands. However, both were *also* distinct from the assimilationist positions espoused by Hindu nationalists in the Constituent Assembly.

Indian nationalism comprised diverse ideological strands that were articulated in public arenas in their modern forms from the nineteenth century. Apart from the national movement led by the Congress party, several political movements based on caste, religion, class, and gender had contributed to the development of nationalist ideals. Two main conceptions of India's national identity are usually distinguished: secular and Hindu.²⁶ In secular nationalist conceptions, the nation was conceived in political terms, as a community united by its commitment to common political ideals, notably those of secularism, democracy and development: nationality was to consist in secular democratic citizenship. European models of nationalism based on language and descent were rejected; commonalities of

language, religion, or any other cultural attribute were not to serve as the basis of India's national identity. In Hindu nationalist versions of India's national identity, articulated by a section of constitution-makers, Indian identity was defined in cultural terms, based typically on Hindi as the national language, descent from Indian religions particularly Hinduism, and other broadly Hindu themes. Minorities were assimilated in, or excluded from, the definition of the national identity.

In the Constituent Assembly debates, the normative-discursive repertoire of Indian nationalism comprised a constellation of inter-related concepts of secularism, equal citizenship rights, democracy, social justice, development and national unity. These were configured differently in the varied strands of nationalist opinion, generating multiple conceptions. For instance, national unity could denote political integrity, and/or social cohesion, and/or national identity. Secularism meant for some, equal citizenship for all individuals irrespective of religion, and for others, religious freedom for groups, distinct conceptions that supported policy implications that sometimes conflicted. Crucially, nationalists of different ideological hues, Hindu sympathizers on the right as much as staunch secularists on the left (these included minority representatives) *converged* on the view that quotas for religious minorities detracted from national unity and also from secularism, justice and democracy. By contrast, this convergence was less evident in the case of quotas for Scheduled Castes and Scheduled Tribes, as well as provisions for religious, linguistic and cultural autonomy, where secularists and Hindu sympathizers often spoke in different voices, and group rights were maintained in the Constitution.

Nationalist claims of our period that minority representation necessarily damaged national unity relied on a particular interpretation of the Indian past and of the history of minority safeguards under colonial rule. Against the colonial view that India was not a nation but a congeries of antagonistic nationalities, kept together by the exercise of imperial power, the nationalist account asserted that communal discord was the product of a deliberate colonial "divide and rule" strategy that set one community against another, to legitimize British presence as the guarantor of peace and of minority interests, and thereby prolong colonial rule in India. Special representation provisions for minorities, notably separate electorates, were the main instrument of the colonial divide and rule. These had bred community consciousness and rivalry, and once instituted, necessarily followed an escalating and separatist logic, leading to an ever-increasing number of groups demanding special measures, and ever-larger and more antagonistic claims, a process that culminated in the bloody partition of the country in 1947. In this narrative, the British as the architects of this policy were viewed as the chief culprits, the minorities, particularly Muslims, as pawns in the colonial game, culpable in allowing themselves to be misled, as blocking progress towards the national goal of liberation from British rule. The partition of the country on religious lines demonstrated, catastrophically, that nationalist fears about the dangers of minority safeguards were justified.²⁷

Integrationist Approach: Legislative Quotas

The integrationist approach is most evident in the debates on reservations for religious minorities, ex-Untouchable and tribal groups. Reserved seats for religious minorities had been accepted in 1947 and were included in the first draft of the Constitution of 1948. Nevertheless, nationalists sought to emphasize this was as “temporary” provisions and as measures of “compromise” or transition—in an ideal future, legislative quotas for religious minorities would no longer exist.²⁸ Legislative quotas for religious minorities were opposed as detracting from secularism, democracy, justice, development, and above all, national unity, a mutually reinforcing constellation of concepts that was invoked by an ideologically diverse cross-section of nationalists. Reservations for religious minorities required the recognition of a person’s religion or caste in matters of public policy, and treated individuals differently depending on the community to which they belonged, which it was argued would undermine secularism. These were seen as detracting from democracy as these implied departures from the principle of the representation of individuals through territorial constituencies. But the overriding apprehension in this period was that the granting of special representation to religious minorities would undermine national unity. Several national-unity concerns coalesced here—the “mixing of religion and politics” in the case of separate electorates was thought to have hardened differences between Hindus and Muslims, and resulted in the bloody break-up of the country. National identity was another concern—quotas were instituted for groups defined in terms of the ascriptive criteria of religion, caste, and tribe, whereas the dominant conception of national identity in mid-20th century India, was civic rather than ethno-cultural, defined in terms of citizenship in a secular liberal-democratic state. And for some religion, caste, and other ethno-cultural affiliations were “backward,” pre-modern relics, inconsistent with the task of building a modern nation-state.

The convergence of liberal and nationalist concerns meant that Hindu nationalists often used the language of secularism, equal rights, and democracy in the Constituent Assembly. It was perhaps their close links with national unity and shared hostility to group-differentiated policies that accounted for the widespread use of a liberal language in this period.²⁹ Secularist advocates of minority rights were also uncomfortable with mechanisms such as quotas that they saw as institutionalizing ethno-cultural groups. For instance, when legislative quotas for religious minorities were eventually withdrawn in 1949, Nehru commended their abolition as “a historic turn in our destiny,” confessing that he had never been convinced about them, and that “doing away with this reservation business . . . shows that we are really sincere about this business of having a secular democracy.”³⁰ At the same time, it is important not to overstate the overlap between nationalists on the left and the right. Convergence is not identity: secular and Hindu nationalists differed on several questions of minority rights in the Constituent Assembly.³¹

By contrast, reservations in the case of Untouchables and tribal groups were easier to accommodate within a liberal nationalist framework. It was argued that these would enable the economic and social advancement of these groups that was desirable from the standpoint of the goals of social justice, national unity and development. In the case of national unity, the assumption was that vertical levelling would produce horizontal integration: bringing Untouchable and tribal groups “up to the level of the rest” in economic terms would reduce the social gulf that separated them from the rest of the population. In the case of national development, “catching up” with the industrialized Western world was the desired goal; this in turn required quotas and other preferential provisions to boost the “backward” sections of the population in the short run; such measures would uplift sections that were dragging the nation down and inhibiting its progress.³² The existence of “backward groups” was a symptom and a reminder of India’s own “backwardness,” the gulf that separated it from advanced Western countries, the club of powerful nations to which it wanted to belong. The register of such developmental arguments was one of paternalistic benevolence.³³ “Backward sections” were cast in dominant nationalist discourse as objects of compassionate and philanthropic action on their behalf, rather than as agents of their own improvement.³⁴

While liberal nationalist and developmentalist ideals offered resources for the accommodation of special representation provisions for Scheduled Castes and Tribes, it is important to note that these supported quotas as temporary affirmative action provisions, and not as a multicultural right. In other words, nationalists rejected quotas as a means of recognizing social identity or protecting the distinct interests for *all groups*: special representation provisions were not intended as permanent instruments of self-government for any group. The case for special treatment of Untouchables and tribals was constantly distinguished from that of religious minorities through an emphasis on their poverty and “backwardness.” Recast as a form of “‘political’ affirmative action,”³⁵ as short-term mechanisms³⁶ that would enable the realization of a future state of affairs in which special representation would no longer be necessary, legislative quotas for Dalits and Adivasis were not intended to serve as a form of *representation* as such.

In other words, as in the case of religious minorities, in the case of the Scheduled Castes and Tribes as well, nationalists rejected multicultural provisions as a means of recognizing the social identity or protecting the distinct interests of these groups.³⁷ There was, for instance, little recognition in nationalist opinion that on account of being historically marginalized, Untouchables and tribals had “a distinctive *perspective* on matters of public policy [emphasis in original],”³⁸ which merited representation, or that members of these groups were in a better position to understand and thereby represent these interests on account of their first-hand experience, better trust and communication with group members.³⁹ Nationalist and developmentalist concerns did not support quotas as a multicultural right, as

a mechanism for minority representation as such.⁴⁰ And while some constitutional provisions in the case of the Scheduled Tribes did include an element of self-government, insofar as *legislative quotas* were concerned, these were advocated as an integrative mechanism. Acute as always about institutional effects, Dr. Ambedkar saw reserved seats for tribal groups as counterbalancing “the tendency towards segregation.”⁴¹

Restricted Multicultural Approach: Religious Freedom, Family Law

A second approach to the accommodation of diversity in the Indian Constitution might be termed “restricted multicultural.” This approach is discernable in the provisions for religious freedom and family laws, as well as the rights of linguistic and tribal groups; I focus here on the former.

Indian constitution-makers adopted a wide definition of religious freedom for individuals and groups. Unlike many other secular constitutions, the Indian Constitution allows associational and institutional autonomy, and includes specific provisions for the public profession of religious identity. Under religious freedom provisions in the Indian Constitution, all individuals have the freedom to “profess, practice and propagate” religion (Article 25) and every religious group or denomination has the right to “establish and maintain institutions for religious and charitable purposes,” to “manage its own affairs in matters of religion,” to own, acquire, and administer property “in accordance with law” (Articles 25 and 26 of the Indian Constitution). The wording of these rights in many cases assumed forms that were in keeping with the concerns of minority representatives. Thus, a broad definition of the right to freedom of religion was adopted after extensive debate, which included the right to practice religion in public spaces and, even more controversially in the face of vehement opposition of Hindu orthodox opinion, the right to “propagate” religion. The latter was in keeping with the demands of Christian representatives who argued that propagation was fundamental to the Christian faith. Religious denominations were permitted by right to hold property, and after extensive debate, the state was allowed to aid educational institutions that imparted religious instruction (including minority institutions), overriding the objections of those who sought to restrict the domain of religion.⁴² Institutional pluralism is notably evident in the retention of separate religious family laws for Hindus, Muslims, Sikhs, and Parsis.⁴³ The demands of ardent secularists for a uniform civil code to supplant the different religious laws that had governed matters such as marriage and divorce in colonial India were rejected.

However, the approach remained limited multicultural overall. The right to freedom of religion is subject to other constitutional rights, including those of equality and nondiscrimination. State intervention is permitted, not just in the interests of public order, morality, and health, as common elsewhere, but also for purposes of social welfare and reform, departing from the colonial state’s stance of nonintervention in the religious affairs of its subjects. Despite previous promises

that religious family laws would be protected by specific constitutional provisions, no guarantees protecting religious laws from state intervention were included in the Constitution; explicit constitutional guarantees were rejected. The non-justiciable Directive Principles of State Policy include a provision for a uniform civil code, however, leaving open the door for legal unification in the future.

A restricted or weak multicultural approach has been defended by scholars as superior to strong or maximal multiculturalism in offering better protections for individuals and vulnerable groups within minorities, such as women.⁴⁴ In the case of the Indian Constitution, the problem was less with the approaches adopted for the accommodation of diversity than with the normative resources, which remained deficient for supporting restricted multiculturalism.

THE NORMATIVE DEFICIT OF LIMITED MULTICULTURALISM IN THE INDIAN CONSTITUTION

The repertoire of secular Indian nationalism did contain materials supporting limited multiculturalism. Thus, in a departure from the standard liberal position, groups as well as individuals were recognized as possessing rights and entitlements.⁴⁵ Speeches frequently emphasized, for instance, that individuals *and* groups should have the freedom to pursue their religions and develop their languages and cultures. Equality and justice were seen to require religious and cultural freedoms for all groups, including minorities; justice, it was said, demanded that no individual *or* group be subject to compulsion in matters of religion or language. Although secularism was construed as incompatible with legislative quotas for religious minorities, it was also seen to require religious and cultural freedom for all groups, including minorities. In most connotations of secularism in nationalist discourse,⁴⁶ the pursuit of religion and the preservation of language and culture on the part of citizens of all communities were held to be legitimate goals; their pursuit by citizens in both their individual and associational capacities was regarded as a corollary of the exclusion of religion from the political domain.

Nevertheless, for multiple reasons, justifications for multicultural provisions remained underdeveloped in nationalist opinion, unlike arguments for the integrationist type of group-differentiated provisions. Prominent among these in this period was the emphasis on individual over group rights.⁴⁷ Liberal individualist and developmentalist ideologies gained enormously from their convergence with nationalist concerns. The emphasis on the individual over the group, and on equal citizenship rights construed as the same rights for individuals from all groups provided a means for welding together a people divided by their group membership into a nation. It also provided the basis for a common national identity in a situation in which ethnic criteria were divisive. Given its links with national unity, it is unsurprising that a liberal language was espoused in the Constituent Assembly by

a wide range of nationalists of diverse ideological moorings, Hindu nationalists as much as Westernized socialists.

The normative deficit of restricted multiculturalism derived also because special provisions for the protection of minority cultures remained undersupported in nationalist opinion. The move from *all* groups having rights to pursue their cultures to the *differential* rights of minorities remained unarticulated in nationalist opinion. In the case of “backwardness,” the tensions between individual and group claims were confronted and arguments fashioned for special treatment of historically disadvantaged groups in terms of nationalist goals. By contrast, it is hard to find any elaboration in nationalist opinion on how the protection of minority cultures formed part of their vision of the common good. In particular, unlike in the case of the Scheduled Castes and Scheduled Tribes, there were no attempts to go beyond formal symmetrical notions of equality to substantive, contextual notions that could justify the differential treatment of cultures. There were, for instance, no arguments along the lines that minorities faced a greater threat to the integrity of their religion, language, or culture than the majority, whose practices are inevitably supported by society and the state.⁴⁸ Thus, in the context of the drafting of minority provisions Articles 29 and 30, the cultural rights of minorities were interpreted largely as negative liberties. The Constitution left open the possibility of state aid, but this was regarded as a concession rather than a duty of the state, whose responsibilities were limited to non-interference with the right of minorities to practice their cultures freely.⁴⁹

The normative deficit in nationalist discourse with regard to the protection of cultural difference is also observable in the case of other minorities, notably tribal groups. There was some acknowledgement in nationalist opinion of a distinctive cultural identity,⁵⁰ but the need to protect tribal lands was qualified in important respects. Since a developmentalist perspective dominated discussions, progressive change in Adivasi cultures in the direction of greater integration with mainstream society was not ruled out, and protectionist provisions sought to give Adivasi communities greater control over the pace and nature of cultural change. Further, protectionist policies such as land rights and tribal councils were envisaged mainly for areas where tribals formed a local majority in a given territory. For areas in which tribals were a minority, or had successfully assimilated into the local population, cultural protection was rarely admitted as a goal.

So far I have suggested that in India’s constitutional vision, there was a *normative deficit* with regard to the protection of cultural difference and minority practices, in large part on account of the limits of the liberal and developmentalist ideas of the time. Because of the recent partition of the country on religious lines, this was most acute in the case of religious minorities. It was also observable in the case of minorities defined by caste or tribe, and in relation to different types of group rights, such as legislative quotas, employment quotas, and rights to cultural autonomy. A normative deficit existed for group-differentiated rights in the case

of legislative quotas for ex-Untouchables and tribals as well, but this was easier to overcome within a liberal nationalist framework. In other words, the accommodation of special representation provisions for caste and tribal minorities was based on *reframing* these as temporary affirmative action provisions, rather than as permanent instruments of self-government for culturally distinct groups.⁵¹ As such, the Indian Constitution did not mark as radical a departure “from accepted liberal practices of the time” as scholars have suggested.⁵²

Against my argument so far, however, it might be contended that India’s linguistic federalism is a form of multicultural accommodation. In Will Kymlicka’s influential schema, based largely on Canadian experience, subnational autonomy is the paradigm form of multiculturalism. The relationship of multiculturalism to territorial self-government policies therefore needs greater examination.

FEDERALISM AND MULTICULTURALISM IN INDIA

Indian experience suggests that the relationship of territorial self-government policies to multiculturalism is complex. Self-government rights can of course help protect group cultures, insofar as *all* relevant groups have such rights, but these are not necessarily instances of group-differentiated rights. During Indian constitution-making, federal provisions were not seen as an instance of a group-differentiated right. All units were granted the same rights, and a single citizenship was instituted.⁵³ Kashmir’s special status (Article 370) was not based on recognition of its ethnic or religious distinctiveness.⁵⁴ Even in the case of princely states, technically sovereign once British rule ceased, proposals for separate constitutions and different relations with the federation were rejected.⁵⁵

It might be argued, however, that policies of self-government based on language seek to compensate for disadvantages faced by their speakers in relation to the dominant majority language that forms the basis of nation-building. In other words, as with affirmative action programs, self-government rights can be said to “asymmetrically distribute rights or opportunities on the basis of group membership.”⁵⁶ Such an interpretation of self-government rights assumes, however, nation-building centered on a single national language, whereas Indian nationalism emerged in the second half of the nineteenth century as a coalition of regional nationalisms and was envisaged as multilingual.⁵⁷ A “sense of region and nation emerged together, through parallel self-definitions,” and so being Bengali-, Marathi-, or Tamil-speaking was regarded as congruent with, and reinforcing, a common Indian identity.⁵⁸ The Congress Party recognized language-based units in its internal organization from the early twentieth century onwards (and particularly after 1920), advocating linguistic states as a more rational basis of provincial organization than the British administrative boundaries.⁵⁹ Thus, although during constitution-making there were pressures for the adoption of Hindi as a national language from Hindu nationalists and others, these were opposed from within the dominant Congress party by non-Hindi speakers.

Ultimately a compromise formula was adopted. Hindi in the Devanagari script was designated as an official language, to be used for "inter-provincial communication."⁶⁰ English would also continue as an official link language, initially for fifteen years, extended since. Fourteen regional languages (now twenty-two) were also listed in the Constitution as national languages entitled to state support, and to be used in public service examinations. Furthermore, while adopting a federal framework, constitution-makers declined, despite pressures from linguistic nationalists to do so, to specify the basis for defining subnational units, i.e. whether this would be on linguistic lines. Although the many proponents of linguistic provinces in the Constituent Assembly pressed their case, they "did not consider themselves separatists,"⁶¹ in contrast to the level of conflict between centralizers / federalists and provincialists / states' rights advocates in Canada and the United States.⁶² The delineation of subnational units in India from the 1950s occurred as a result of a political process involving contentious mobilization, and was a "symmetrical reform, recognizing minority languages, but [only] on a symmetrical basis."⁶³

Finally, as self-government rights facilitate nation-building at sub-state levels, in India, as in the United States and other countries, they have in practice conflicted with the rights of minorities of religion, caste, tribe, or language. During constitution-making, the protection of minorities was often cited against the rights of states, and in favor of strengthening the central government.⁶⁴ This concern has been borne out subsequently in the many instances of collusion by state government and the police agencies they control in violence against religious minorities.⁶⁵ Most Indian state governments have passed laws against beef-eating and religious conversion that discriminate against religious minorities.

Indian experience thus suggests that while territorial self-government policies are instances of group rights, these do not necessarily constitute group-differentiated rights, as all groups may have the same rights. Nor are they strictly speaking minority rights, since the relevant territorial units are often dominated by religious, caste and language groups that form majorities.

NEW CONJUNCTURES, OLD CONSTRAINTS

Since the promulgation of the Indian Constitution in 1950, group-differentiated rights have expanded in several areas. Employment and education quotas have expanded since the 1990s to include large new groups of mainly intermediate lower castes (the so-called Other Backward Classes, or OBCs). Stronger multicultural policies were instituted for Muslims in 1986, when the Indian Parliament passed a law that exempted the Muslim community from provisions of a common criminal code in the area of family law. On the other hand, the rise of Hindu nationalism since the 1990s has been accompanied by growing discrimination and violence against minorities, particularly Muslims, which has intensified since the

election of a Hindu Right government in 2014.⁶⁶ Many factors have contributed to the complementary expansion of group-differentiated rights and of Hindu nationalism since the 1980s. In India, as elsewhere, majoritarian nationalism appears to be a reaction to multicultural and affirmative action policies, and a popular revolt against a liberalism seen as elitist.⁶⁷

The paradigm shift in constitution-making from consociationalism to affirmative action remains influential. Its long term, systemic effects can be observed in the fact that all substantial extensions of quotas have been to groups designated as “backward,” and in the shape of group rights claims, where “backward” has become the inclusive term to denote a group’s eligibility for special treatment, just as “minority” was in the late colonial period. Based on findings of Muslim socio-economic deprivation, the 2004–14 Indian government sought to extend affirmative action to Muslims in a limited form.⁶⁸ Muslim parties and leaders have pressed for the inclusion of Muslims in the list of Scheduled Castes (currently Muslims are included in state lists of OBCs and STs, but not SCs),⁶⁹ on grounds of economic and educational “backwardness,” invoking constitutional values of nondiscrimination and religion-neutrality of state policy.

The normative deficit of group-differentiated rights has remained and has been accentuated in some respects. In the case of cultural protection, for instance, although communitarian conceptions of secularism were advanced during the Shah Bano debate regarding the independence of Muslim personal law, policy-makers failed to justify special treatment in terms of nondomination or group oppression.⁷⁰ Why Muslims ought to have greater freedom from state intervention than the Hindu majority, whose religious laws were subjected to state reform in the 1950s, remained unarticulated. During the expansion of educational and employment quotas to include intermediate castes since the 1990s, policy-makers neither elaborated justifications for these in terms of the common good, nor imposed institutional limits that would render them consistent with nondiscrimination and equality of opportunity. How benefits for lower castes would enable a more equal or just society for all, for instance, was not elaborated. As such, the expansion of quotas underpinned by the new discourse of social justice has remained vulnerable to criticisms that these are sectional benefits to court electorally powerful constituencies at the expense of the national good. The attempts by the Congress-led United Progressive Alliance government (2004–14) to include religious minorities within the ambit of affirmative action have been executive-led and ad hoc. These attempts have been unaccompanied by actions that could build a broader consensus, or the elaboration of reasons for affirmative action for religious minorities in terms of the common good.

As scholars have argued, differential treatment of minority personal law in India can be justified on several different grounds: on the basis of equal respect for all individuals, as minority religions are disadvantaged in relation to the majority religion; on the basis that imposition of reforms on subordinated groups

compounds injustices; and because minorities are under-represented in state institutions, and so disadvantaged with respect to collective self-determination in religious matters, unlike Hindus. Similarly, quotas for disadvantaged caste or religious minorities in education and employment can be justified as a universal benefit from the standpoint of democratic citizenship, since they offer individuals from different social backgrounds the opportunity to interact in ways that makes them better citizens,⁷³ or better equipped to live together on terms of equality.⁷⁴

There have, however, been few attempts by policy-makers to construct a robust, normative ideological basis for such policies in terms of the common good, as universal benefits that serve the national interest. The dominant narratives of national unity and national identity in India continue in a sense to be imprisoned in the Partition era, with successful examples of the recognition of group rights since then (e.g., the decline in demands to secede after the accommodation of linguistic claims through subnational territorial autonomy) having little impact on official discourse and popular understandings. Policy evolution and political change in India continues to be shaped by the resolutions arrived at, and those left unfinished, at its founding moment. In terms of policy, religious freedoms of minorities have been truncated by the enactment of laws against cow slaughter and conversions in most states. In politics, the continuing normative deficit of group-differentiated rights has meant that state assistance for particular groups is perceived as an illegitimate concession detracting from the national good and motivated solely by electoral considerations, rather than a matter of justice. Unsurprisingly, the Hindu Right, with its rhetoric of putting the national interest first, and criticism of minority appeasement—that special provisions for minorities are a form of group partiality, unjust favoritism with little principled basis—has benefitted.

Hindu nationalism in India, like majoritarian nationalisms elsewhere, reflects a “minority complex,”⁷⁵ a sense that the majority religion is not getting its due share of recognition and resources from the state. Following V.D. Savarkar’s influential *Hindutva* (1923), Hindu nationalists locate Indian identity in Hindu civilization (*sanskriti*), defining a Hindu as a person who regards India as their father-land as well as holy-land. This definition includes members of Indic religions—Buddhists, Jains, Sikhs—but excludes Muslims and Christians. The duty of Hindu nationalists is to restore the lost “grandeur of Hindu culture and their supremacy over a land that had been invaded by foreigners” (Muslim and Christian invaders) through fashioning a more muscular, disciplined, and masculine Hindu identity.⁷⁶ During the movement for Indian independence and constitution-making, Hindu nationalism was overtaken and, to an extent, subsumed within the Congress-led secular nationalism, held in check by leaders such as Gandhi and Nehru.⁷⁷ However, Hindu nationalism has remained a powerful undertow throughout India’s political history, with the educational and social work at the grassroots level carried out by the RSS and its affiliates. It achieved its electoral breakthrough on the national stage in the 1990s, with the decline of the Congress Party creating the space for

the rise of the Bharatiya Janata Party. The BJP has consistently opposed multicultural policies such as religious family laws and special status for Kashmir, and in support of normative Hindu food habits and attitudes to religion, has enacted or strengthened laws against cow slaughter and conversions. The BJP's rise and periods in power have been accompanied by an increase in incidents of violence, intimidation, harassment, and hate speech against religious minorities, notably Muslims, as well as political dissidents. Since the election of a BJP majority government in 2014, instances of violence and lynching of Muslims by Hindu mobs have increased.

The BJP government since 2014 has resisted calls for strong condemnation of anti-Muslim violence, retained and elevated ministers who have made hate speeches against Muslims, and appeared to support the cultural domination of minorities, demoting public holidays associated with minorities such as Christmas and Easter and official Eid celebrations. In the routine violations of the basic human rights of religious minorities and dissidents, and growing authoritarianism, India looks less like a democratic exception, and more like its neighbors Pakistan, Sri Lanka, Myanmar, and many other countries in Asia and Africa.

CONCLUSIONS

In the emerging literature on comparative multiculturalism, India is often regarded as an exceptional case.⁷⁸ The Indian Constitution of 1950 recognizes the rights of religious and linguistic minorities, and indigenous groups and castes. Predating policies of multiculturalism in Western democracies by several decades, the constitutional entrenchment of group rights in India derived from colonial and nationalist legacies, both informed by longer historical, political and social practices of dealing with difference.⁷⁹

Multicultural provisions in India encounter similar challenges to those that have hindered their adoption in other Asian states.⁸⁰ At independence, in India, as in other countries of the British Commonwealth, minorities were seen as "illegitimately privileged" by the colonial state, and there was a desire "to roll back the privileges accorded to minorities under colonialism."⁸¹ Relative to the late colonial state, the Indian Constitution marked a cutback in multicultural provisions. Historical association with Western imperialism continues to pose a challenge to defenders of minority rights in India and other postcolonial countries. Moreover, the influence at constitution-making of a mid-twentieth-century developmentalist ideology meant that in India, as elsewhere,⁸² the nationalist hope was that religious, caste, linguistic, and other ethnic conflicts would fade away once modernization, arrested under colonial rule, got underway. From a nationalist developmentalist standpoint, exemplified by Nehru, ethnic claims were regarded as reminders of India's "backwardness," out of step with the times, and distractions from the real problems, which were economic.⁸³

Although liberal ideas in the Indian Constituent Assembly were more accommodating of group-differentiated rights than their Western counterparts,⁸⁴ a normative deficit remained with regards to minority rights.⁸⁵ Group-differentiated rights were accommodated predominantly as temporary affirmative action provisions for the uplift of “backward” sections, a means toward the ideal of ethnicity-blind citizenship.⁸⁶ In India, as elsewhere, liberal opposition to differentiated citizenship was conjoined with nationalist concerns about the divisiveness of special treatment in ways that constrained the normative-ideational space for group-differentiated rights. An “acceptance of the existing cultural plurality” was not accompanied by “a positive evaluation of diversity that provided the rationale for the multicultural framework.”⁸⁷

As in other countries of Asia and Africa,⁸⁸ in India, too, group rights predate the institution of a liberal-democratic framework of equal individual rights. Although liberal ideas have been more prevalent and influential in India than is commonly believed,⁸⁹ their proponents there have rarely expanded on the need for constraints on state power for the sake of personal freedoms. The enforcement of rule of law and protections for individual freedoms remains weak, whereas communitarian ways of thinking have been more powerful. In India, as in other states of Asia and Africa affected by geopolitical insecurity, minorities have been seen as a threat to the security of the state, “a potential ‘fifth-column,’ prone to collaboration with a neighbouring enemy.”⁹⁰ Since the partition of India to create Pakistan, Muslims in particular have been accused of divided loyalties, exacerbated by continuing India-Pakistan tensions and the conflict over Kashmir. With the growing violence, hate-speech, and discrimination against Muslims that has accompanied the ascendancy of Hindu nationalism, India is similar to other countries in Asia and Africa where ethnic majoritarianism prevails, unconstrained by rule of law.

Even though the Indian experience has many features in common with those of other states in Asia and Africa, it remains conceptually significant, bringing to the fore important features of multiculturalism often neglected in Western debates. For example, Indian Constituent Assembly debates highlight a close affinity—often overlooked in the West—between liberal concerns of equal citizenship and nationalist concerns of political unity and social cohesion. Liberal opposition to group-differentiated rights has been underpinned by nationalist considerations to a much greater extent than contemporary defenders of liberalism acknowledge.⁹¹ This is not, however, to suggest that liberal values are inextricably embedded within a unitary homogenizing nation-state, and so necessarily opposed to group-differentiated rights, as postcolonial theorists have tended to suggest.⁹² In Indian policy debates, considerations of secularism, equal citizenship, and equality of opportunity have been construed, often appropriately, as consistent with group-based rights, as I have detailed elsewhere.⁹³ It is, however, to suggest that owing to overly narrow understandings of the requirements of national unity, the resources

that liberal-democratic principles offer for the justification of group rights remains to be elaborated by policy makers in India and elsewhere.

The Indian case also highlights the need to make a distinction between multicultural rights in general, and minority rights, between *group* rights, on the one hand, and *group-differentiated* rights, on the other. Multicultural policies enhance the autonomy of majority as well as minority groups; minority rights or policies for the protection of cultural difference are a subset of multicultural rights. This distinction remains underdeveloped in contemporary theories of multiculturalism. In Kymlicka's framework, for instance, the paradigmatic form of multicultural right is territorial self-government for national minorities. Subnational autonomy, however, can apply to majority groups (e.g., the English in the United Kingdom), as well as minorities (e.g., the Scottish and Welsh in the UK). India's multinational federalism that recognizes the claims of self-government of several linguistic and tribal groups is an example of a multicultural policy that is not a group-differentiated right, and has weakened protections for religious, caste, and linguistic minorities. This could be a sequencing issue;⁹⁴ scholars have suggested that basic individual rights need to be entrenched before group rights are recognized. However, majoritarian multiculturalism in India and elsewhere also suggests that arguments for cultural protection need to be supplemented with those for the protection of cultural *difference* and minority practices.

Lastly, Indian debates highlight a complex fact: liberal frames are insufficient, but also remain *necessary* for the elaboration and evaluation of multiculturalism. On the one hand, a framework for multiculturalism in Asia and Africa needs to recover resources from a range of traditions—socialist, radical democratic, republican, and religious—for the justification of group rights. For example, Indian arguments for group rights have invoked considerations of national unity and development, communitarian conceptions of secularism, democratic values of equality and of status and dignity for the disadvantaged. On the other hand, for group rights to be more multicultural in terms of recognizing minority rights, these need to be more liberal in terms of respecting individual freedoms. In India, as elsewhere, most minority demands pertain to the lack of enforcement in the case of minorities of universal protections offered by liberal states to all citizens—physical security and freedom from arbitrary arrest and detention, freedom of religion, nondiscrimination and equal opportunity in employment. Indian experience reminds us that standard liberal freedoms remain important and unrealized for religious, political, and sexual minorities.

NOTES

1. See, e.g., Gurpreet Mahajan, *Identities and Rights: Aspects of Liberal Democracy in India* (Delhi: Oxford University Press, 1998), and Rajeev Bhargava, "Democratic Vision of a New Republic: India,

1950,” in *Transforming India: Social and Political Dynamics of Democracy*, ed. Francine Frankel, 26–59 (Delhi: Oxford University Press, 2000).

2. See, e.g., Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995). Following common practice, the term “multiculturalism” is used in a broad sense, to denote “group rights,” “minority rights,” “preferential treatment,” and “special treatment” in a relatively loose and inclusive fashion (Will Kymlicka and Wayne Norman, eds., *Citizenship in Diverse Societies* [Oxford: Oxford University Press, 2000], 2). Such policies are distinguished by the fact that these go beyond common rights for all citizens. Debates on policies for minorities and lower castes have distinct historical trajectories in India—see Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India* (Delhi: Oxford University Press, 2011).

3. E.g., Partha Chatterjee, “Secularism and Tolerance,” in *Secularism and Its Critics*, ed. R. Bhargava, 345–79 (Delhi: Oxford University Press, 1998).

4. For details, see Rochana Bajpai, “The Conceptual Vocabularies of Secularism and Minority Rights in India,” *Journal of Political Ideologies* 7, no. 2 (2002): 179–97, and Bajpai “Secularism and Multiculturalism in India: Some Reflections,” in *The Problem of Religious Diversity: European Challenges, Asian Approaches*, ed. Anna Triandafyllidou and Tariq Modood, 204–27 (Edinburgh: Edinburgh University Press, 2017).

5. Rochana Bajpai, “Beyond Identity? UPA Rhetoric on Social Justice and Affirmative Action,” in *New Dimensions of Politics in India: The United Progressive Alliance in Power*, ed. Lawrence Saez and Gurharpal Singh (London: Routledge, 2012).

6. E.g., Gurpreet Mahajan, “Indian Exceptionalism or Indian Model: Negotiating Cultural Diversity and Minority Rights in a Democratic Nation-State,” in *Multiculturalism in Asia*, ed. Will Kymlicka and Baogang He (Oxford: Oxford University Press, 2005), 288–313; Mahajan, *Identities and Rights*; and Bhargava, “Democratic Vision.”

7. E.g., Iqbal Ansari, “Minorities and the Politics of Constitution Making in India,” in *Minority Identities and the Nation State*, ed. D. L. Sheth and G. Mahajan, 113–37 (Delhi: Oxford University Press, 1999).

8. Rochana Bajpai, “Constituent Assembly Debates and Minority Rights,” *Economic and Political Weekly* 35, no. 21–2 (2000): 1837–45, and Bajpai, *Debating Difference*.

9. Groups defined in terms of social and economic criteria (landholders, universities, and trade associations) were also represented in legislative bodies. See Judith Brown, *Modern India: The Origins of an Asian Democracy* (Oxford: Oxford University Press, 1990), 142; and Sunil Khilnani, *The Idea of India* (London: Hamish Hamilton, 1997).

10. India, *Constituent Assembly Debates: Official Report* (New Delhi: Lok Sabha Secretariat, 1946–50), 5: 246, 249; and Ralph Retzlaff, “The Problem of Communal Minorities in the Drafting of the Indian Constitution,” in *Constitutionalism in Asia*, ed. R. N. Spann (Bombay: Asia Publishing House, 1963), 72.

11. See B. Shiva Rao, *The Framing of India’s Constitution: Select Documents* (Delhi: Indian Institute of Public Administration, 1967), 770–80, and Bajpai, *Debating Difference*.

12. Retzlaff, “Problem of Communal Minorities,” 72

13. For details, see Bajpai, *Debating Difference*.

14. Mahajan, *Identities and Rights*.

15. Z. H. Lari in India, *Constituent Assembly Debates*, 7: 900–903.

16. For details, see Bajpai, *Debating Difference*.

17. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966), 1st Indian ed. with new preface (Bombay: Oxford University Press, 1972), 197.

18. For details, see *ibid.*, esp. chaps. 8, 10, and 11.

19. Ansari, “Minorities and the Politics of Constitution Making,” 134.

20. From the late eighteenth century on, parts of religious law pertaining to family law, caste, and religious endowments were exempted from the purview of state regulatory action. See J. Duncan M.

Derrett, *Introduction to Modern Hindu Law* (Oxford University Press [Indian Branch], 1963), and Archana Parasher, *Women and Family Law Reform in India* (New Delhi: Sage, 1992).

21. See, e.g., Rao, *Framing of India's Constitution*, 2: 416, on the first minority rights report of 1947.
22. Marc Galanter, *Competing Equalities, Law and the Backward Classes in India* (Delhi: Oxford University Press, 1984), 153.
23. K. M. Munshi in *Constituent Assembly Debates*, 5: 227.
24. See, e.g., Mohamed Ismail Sahib and Sardar Hukam Singh, cited in Bajpai, *Debating Difference*.
25. Some of the most vocal supporters of the integrationist position were from minority backgrounds. Most women representatives in the Constituent Assembly espoused an integrationist position.
26. Ashutosh Varshney, "Contested Meanings: India's National Identity, Hindu Nationalism, and the Politics of Anxiety," *Dædalus* 122, no. 3, *Reconstructing Nations and States* (Summer 1993): 227–61.
27. Although the Congress party had endorsed separate electorates up until the 1930s, by the time of the Constituent Assembly debates, it was an article of nationalist faith that "history" had shown that separate representation destroyed national unity.
28. E.g., S Radhakrishnan in *Constituent Assembly Debates*, 5: 283–84.
29. See, e.g., Mahavir Tyagi in *Constituent Assembly Debates*, 5: 219.
30. *Constituent Assembly Debates*, 8: 329, 332.
31. For details, see Bajpai, *Debating Difference*.
32. See, e.g., K. T. Shah in *Constituent Assembly Debates*, 7: 655.
33. Niraja Gopal Jayal, *Democracy and the State, Welfare, Secularism, and Development in India* (Delhi: Oxford University Press, 1999).
34. In its role as the director of the project of development, the postcolonial state assumed a stance that was very similar to its colonial predecessor, that of guardian and protector of "weaker groups" (Chatterjee 1995, 218), which served to legitimize the nationalist elite as the leaders of society, rescuing the "masses" from backwardness.
35. Kymlicka, *Multicultural Citizenship*, 141.
36. Galanter, *Competing Equalities*, and Mahajan, *Identities and Rights*.
37. See, e.g., Vallabhbai Patel in *Constituent Assembly Debates*, 5: 272.
38. Melissa Williams, *Voice, Trust, and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton, NJ: Princeton University Press, 1998), 6.
39. Kymlicka, *Multicultural Citizenship*, and Jane Mansbridge, "What Does a Representative Do? Descriptive Representation in Communicative Settings of Distrust, Uncrystallized Interests, and Historically Denigrated Status," in *Citizenship in Diverse Societies*, ed. Kymlicka and Norman, 99–123.
40. As Kymlicka notes of special representation provisions as a form of affirmative action, "it is unclear in what sense this is a form of *representation*, for there are no mechanisms in this model for establishing what each group wants, or for ensuring that the 'representatives' of the group act on the basis of what the group wants" (Kymlicka, *Multicultural Citizenship*, 148).
41. Rao, *Framing of India's Constitution*, 587.
42. *Ibid.*, vol. 2.
43. All Indian citizens are governed by a common criminal law, but in matters of family law pertaining to marriage, divorce, succession, adoption, guardianship, and maintenance, members of four major religious communities—Hindu, Muslim, Christian, and Parsi—are governed by their respective religious laws. The post-independence Indian state has undertaken reforms in Hindu law, but like some other states (e.g., Israel), it has largely adopted a stance of nonintervention vis-à-vis the personal laws of minority communities.
44. Kymlicka, *Multicultural Citizenship*, and Ayelete Shachar, "Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation," *Journal of Political Philosophy* 6, no. 3 (1998): 285–305.
45. See also Mahajan, *Identities and Rights*, and Bhargava, "Democratic Vision."
46. On different meanings, see Bajpai, "Conceptual Vocabularies."

47. See, e.g., G. B. Pant in *Constituent Assembly Debates*, 2: 332.
48. See, e.g., Kymlicka, *Multicultural Citizenship*.
49. On the general point, see, e.g., Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, NJ: Princeton University Press, 1980).
50. Galanter, *Competing Equalities*, and Mahajan, *Identities and Rights*.
51. On the distinction, see, e.g., Kymlicka, *Multicultural Citizenship*, 33.
52. Mahajan, *Identities and Rights*; Mahajan, “Indian Exceptionalism or Indian Model”; and Bhargava, “Democratic Vision.”
53. See Austin, *Indian Constitution* (1972), 189.
54. Louise Tillin, “United in Diversity? Asymmetry in Indian Federalism,” *Publius: The Journal of Federalism* 37, no. 1 (2007): 56–57, notes that the Indian Constitution’s asymmetrical arrangements in the case of tribal areas in northeast India (Sixth Schedule) are “peripheral” units distinct from the rest of India and do not represent “an official commitment to constitutional asymmetry” in general.
55. Austin, *Indian Constitution* (1972), 252–53. The retreat from constituent powers for state legislatures was explained thus: “the idea of separate constitutions being framed for the different . . . units of the Indian Union was a legacy of the Rulers’ polity and that in a people’s polity there was no scope for variegated constitutional patterns” (Vallabhbhai Patel, *Constituent Assembly Debates*, 10: 162–63, cited in Austin, *Indian Constitution* (1972), 252).
56. Kymlicka, *Multicultural Citizenship*, 222n8.
57. Jyotirindra Dasgupta, “India’s Federal Design and Multicultural National Construction,” in *The Success of India’s Democracy*, ed. Atul Kohli (Cambridge: Cambridge University Press, 2001).
58. Khilnani, *Idea of India*, 153.
59. Neera Chandhoke, “Negotiating Linguistic Diversity: A Comparative Study of India and the United States,” in *Democracy and Diversity: India and the American Experience*, ed. K. Shankar Bajpai (New Delhi: Oxford University Press, 2007), 120.
60. Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, 1st ed. (Oxford: Clarendon Press, 1966), 266.
61. Austin, *Indian Constitution* (1972), 239.
62. Austin, *Indian Constitution* (1966), 186.
63. Tillin, “United in Diversity?” 48. Subsequently, states with substantial tribal groups have also been carved out of linguistic states—e.g., Chattisgarh and Jharkhand in 2000.
64. Austin, *Indian Constitution* (1966), 238.
65. Notably in Gujarat in 2002 and in Assam in 2012.
66. For an account, see Amrita Basu, “More Than Meets the Eye: Sub Rosa Violence in Hindu Nationalist India,” Institute for Religion, Culture and Public Life (IRCPL) Conference on Democracy and Religious Pluralism, Columbia University, New York, February 12–13, 2016.
67. On Hindu nationalism as a form of “elite revolt” by upper castes against the growing political power of lower castes, see Stuart Corbridge and John Harriss, *Reinventing India: Liberalization, Hindu Nationalism and Popular Democracy* (Malden, MA: Polity Press, 2000).
68. For details, see Bajpai, “Beyond Identity?” Reports commissioned by the government on the status of minorities, notably the Sachar Commission in 2006 and the Ranganath Misra Committee in 2007, have provided evidence of substantial social discrimination and economic exploitation among Muslims in particular.
69. As per the Constitution (Scheduled Caste) Order of 1950, only Hindu and Sikh dalits were eligible for SC benefits. In 1990, this was extended to Buddhists (following Dr. Ambedkar, a substantial portion of Dalits had converted to Buddhism). Dalit Christians and Dalit Muslim communities are included in lists of Backward Classes in several states, but are not yet eligible for Scheduled Caste status, which brings a higher level of benefits. The Scheduled Tribes category, in contrast, does include Christian and Muslim groups.

70. For details, see Bajpai, *Debating Difference*.
71. Jeff Spinner-Halev, "Feminism, Multicultural Oppression, and the State," *Ethics* 112, no. 1 (2001): 84–113.
72. Uday Mehta, "Gujarat—Hindu Rashtra Laboratory," in *Religion, Power and Violence: Expression of Politics in Contemporary Times*, ed. Ram Puniyani (Thousand Oaks, CA: Sage, 2005). See also Pratap Bhanu Mehta, "Reason, Tradition and Authority: Religion and the Indian State," in *Toleration on Trial*, ed. Ingrid Creppell, Russell Hardin, and Stephen Macedo, 193–214 (Lanham, MD: Lexington Books, 2008).
73. Martha Nussbaum, "Affirmative Action and the Goals of Higher Education" (paper presented at Conference on Affirmative Action in Higher Education in India, the United States and South Africa, New Delhi, March 19–21), 2008.
74. Elizabeth Anderson, "Integration, Affirmative Action and Strict Scrutiny," *New York University Law Review* 77 (2002): 1195–1271.
75. Stanley J. Tambiah, *Sri Lanka: Ethnic Fratricide and the Dismantling of Democracy* (London: I. B. Tauris, 1986).
76. Christophe Jaffrelot, "The Hindu Nationalists and Power," in *The Oxford Companion to Politics in India*, ed. Niraja Gopal Jayal and Pratap Bhanu Mehta (Delhi: Oxford University Press, 2011), 206.
77. The Constitution contains some Hindu nationalist elements, including the desirability of prohibiting cow slaughter and the subsumption of Sikhs, Buddhists, and Jains within the category Hindu in matters of religious personal law. For more details, see Pritam Singh, "Hindu Bias in India's 'Secular' Constitution: Probing Flaws in the Instruments of Governance," *Third World Quarterly* 26, no. 6 (2006): 909–26.
78. See, e.g., Kymlicka and He, eds., *Multiculturalism in Asia*.
79. For details, see Bajpai, *Debating Difference*.
80. Kymlicka and He, eds., *Multiculturalism in Asia*.
81. *Ibid.*, 7.
82. *Ibid.*, 12.
83. See Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse?* (London: Zed Books, 1986), 140–41.
84. Mahajan, *Identities and Rights*, and Bhargava, "Democratic Vision."
85. Liberalism in India remains understudied and usually assimilated into nationalism, but represented a distinct strand of ideas, as I have argued elsewhere. See Rochana Bajpai, "Liberalisms in India: A Sketch". In: *Liberalism as Ideology: Essays in Honour of Michael Freedman*. ed. Ben Jackson, and Marc Stears 53–76 (Oxford: Oxford University Press, 2012).
86. Constitution-makers saw this category as including Untouchable and tribal groups, but not religious minorities. For a leading example of how affirmative action provisions are less problematic for liberals than multicultural provisions, see, e.g., Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Malden, MA: Polity Press, 2001), 114.
87. Mahajan, "Indian Exceptionalism or Indian Model," 291–92.
88. Kymlicka and He, eds., *Multiculturalism in Asia*.
89. Bajpai, "Liberalisms in India".
90. Kymlicka and He, eds., *Multiculturalism in Asia*, 9.
91. As Kymlicka notes, historically, liberals have objected to minority rights on grounds of "stability, not freedom or justice" (Kymlicka, *Multicultural Citizenship*, 68–69).
92. E.g., Partha Chatterjee, "Secularism and Tolerance."
93. Bajpai, *Debating Difference*.
94. Kymlicka and He, eds., *Multiculturalism in Asia*.