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# **REDRAWING THE REPUBLIC FEDERALISM, REPRESENTATION, AND THE CONSTITUTIONAL POLITICS OF INDIA'S 2026 DELIMITATION IMPASSE**

AUTHORED BY - AASHIGA SS

*The Dr. B.R. Ambedkar Law University, The School of Excellence in Law*

## **Abstract**

In April 2026, the Union Government's attempt to lift the fifty-year freeze on the allocation of Lok Sabha seats among Indian states collapsed on the floor of Parliament, falling fifty-four votes short of the two-thirds majority required to amend the Constitution. This essay argues that the defeat of the Constitution (One Hundred and Thirty-First Amendment) Bill, 2026 should not be read as the resolution of India's delimitation controversy but as its opening skirmish. It traces the constitutional architecture of delimitation from Articles 81, 82, and 170 through the Forty-second and Eighty-fourth Amendments that suspended proportional representation to protect low-fertility southern states, and situates the 2026 legislative package, and its defeat, within the wider political economy of demographic divergence between northern and southern India. The essay's central doctrinal contribution is to argue that redistributing parliamentary seats among states may fall within the entrenched category of constitutional amendments under the proviso to Article 368(2), which requires ratification by half of India's state legislatures for amendments touching "the representation of States in Parliament" a ratification the government did not seek. It further traces the evolution of judicial review over delimitation from the near-absolute ouster recognised in *Meghraj Kothari v. Delimitation Commission* to the qualified scrutiny doctrine recently articulated in *Kishorchandra Chhanganlal Rathod v. Union of India*, and argues that a constitutional amendment altering the representational framework itself falls outside the protective shadow of Article 329(a). Drawing comparative lessons from the United States' bicameral compromise, the United Kingdom's independent boundary commissions, and Canada's constitutionally entrenched seat-floor guarantees, the essay proposes that any future Indian reform embed an enforceable representational floor, seek state ratification as a matter of legitimacy rather than mere litigation risk, and decouple the implementation of women's parliamentary reservation from the broader reapportionment dispute. The delimitation question, this essay concludes, will resurface once

the ongoing census is finalised, and the constitutional questions it left unanswered in 2026 will have to be confronted rather than merely postponed.

**Keynotes-** Federalism, Delimitation, Representation, reservation.

## I. Introduction

On 16 April 2026, the Union Government convened a special three-day session of Parliament and introduced three interlinked pieces of legislation that, had they passed, would have constituted the most consequential rewriting of India's electoral architecture in over fifty years: the Constitution (One Hundred and Thirty-First Amendment) Bill, 2026, the Delimitation Bill, 2026, and the Union Territories Laws (Amendment) Bill, 2026<sup>1</sup>. Two days later, the Constitution Amendment Bill was put to a vote in the Lok Sabha. Of five hundred and twenty-eight members present, two hundred and ninety-eight voted in favour and two hundred and thirty against a comfortable majority in absolute terms, but fifty-four votes short of the two-thirds threshold that Article 368 demands for amending the Constitution<sup>2</sup>. The Bill fell. The Delimitation Bill and the Union Territories Bill, both contingent on the constitutional amendment's passage, fell with it.

The defeat was, on its face, a straightforward failure of parliamentary arithmetic. But beneath the vote count lay a far older and unresolved constitutional anxiety: what happens when the founding promise of “one person, one vote” collides with a federal bargain that had, for half a century, deliberately insulated certain states from the electoral consequences of their own demographic success? This essay argues that the 2026 delimitation episode is not a settled dispute that ended with a failed vote, but the opening skirmish of a constitutional confrontation that will resurface with greater force once the ongoing census is finalised. It contends, further, that the government's chosen legislative route an ordinary constitutional amendment passed by Parliament alone may have proceeded on a mistaken premise about which provisions of the Constitution can be amended without the ratification of state legislatures under the proviso to Article 368(2), and that this unresolved question, rather than the political arithmetic of who gains or loses seats, is likely to be the true battleground the next time this reform is attempted.

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<sup>1</sup>PRS Legislative Research, The Delimitation Bill, 2026 (July 2026), <https://prsindia.org/billtrack/the-delimitation-bill-2026>; PRS Legislative Research, The Constitution (131st Amendment) Bill, 2026, <https://prsindia.org/billtrack/the-constitution-131st-amendment-bill-2026>.

<sup>2</sup>Voterlist.co.in, Delimitation Bill 2026: Introduced in Lok Sabha, Constitution Amendment Bill Voted Down (Apr. 18, 2026), <https://voterlist.co.in/lok-sabha-seat-increase-543-to-850-women-reservation-bill/>.

The essay proceeds in eight parts. Part II reconstructs the constitutional architecture governing delimitation and the fifty-year freeze on seat allocation. Part III examines the substance and defeat of the 2026 legislative package. Part IV situates the dispute within the political economy of demographic divergence between northern and southern India. Part V advances the essay's central doctrinal argument regarding Article 368(2). Part VI traces the evolution of judicial review over delimitation from an almost absolute bar to a qualified scrutiny standard. Part VII draws on comparative constitutional experience to identify what protections other federations offer their slower-growing constituent units, and what India conspicuously lacks. Part VIII proposes a route toward constitutional settlement.

## **II. The Constitutional Architecture of Delimitation**

### ***A. Articles 81, 82, and 170: The Textual Mandate***

The Constitution's design for representation in the Lok Sabha rests on a simple, arithmetic idea: seats among states must be allocated, “so far as practicable,” in proportion to population, and constituencies within a state must be of roughly equal size<sup>3</sup>. Article 82 requires that upon the completion of each census, Parliament shall by law readjust the allocation of Lok Sabha seats among the states and the division of each state into territorial constituencies. Article 170 imposes an equivalent obligation for State Legislative Assemblies<sup>4</sup>. Neither provision contemplates that this readjustment is optional; both use the language of a continuing constitutional duty tied to the decennial census cycle. This design reflects a specific vision of representative democracy: that the House of the People should track the people, not freeze them in time.

### ***B. The Freeze: The Forty-Second and Eighty-Fourth Amendments***

That undisturbed operation lasted for exactly three cycles. Delimitation Commissions constituted after the 1951, 1961, and 1971 Censuses redrew both the number of seats per state and their internal boundaries, achieving something close to genuine population parity: after the third exercise, the population represented by a single Lok Sabha seat varied only modestly across states<sup>5</sup>. Then, in 1976, at the height of the Emergency, Parliament enacted the Forty-Second Amendment, freezing the total number of seats allocated to each state, and each State

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<sup>3</sup>India Const. arts. 81, 82.

<sup>4</sup>Id. art. 170.

<sup>5</sup>Countercurrents, *Delimitation in India: History, Politics, and the Road Ahead* (May 14, 2026), <https://countercurrents.org/2026/05/delimitation-in-india-history-politics-and-the-road-ahead/>.

Assembly, at the levels fixed after the 1971 Census, until the first census conducted after the year 2000<sup>6</sup>. The stated justification was demographic: states that aggressively pursued family planning should not be punished, in Parliament, for succeeding at it, while high-fertility states continued to grow<sup>7</sup>.

When the year 2000 approached, Parliament revisited the question rather than allowing the freeze to lapse. The Eighty-Fourth Amendment, enacted in 2001, extended the freeze for a further quarter-century, until the first census after 2026, while permitting the redrawing of constituency boundaries within each state's existing seat total using 1991 Census data<sup>8</sup>. This is the freeze whose expiry the 2026 Bills sought to address twenty-five years after it was last extended, and fifty years after it was first imposed.

### ***C. Delimitation Commissions: 1952 to 2008, and the Unfinished North-East***

Parliament has constituted a Delimitation Commission on four occasions 1952, 1962, 1972, and 2002 each chaired by a sitting or retired Supreme Court judge, and each tasked with redrawing constituency boundaries and, in the first three exercises, reapportioning seats among states<sup>9</sup>. The most recent Commission, chaired by Justice Kuldeep Singh, operated between 2002 and 2008 under a Parliament-imposed constraint: it could redraw internal constituency boundaries using 2001 Census data and recalculate Scheduled Caste and Scheduled Tribe reservations, but it could not alter the total number of seats allotted to any state<sup>10</sup>. Delimitation in four north-eastern states Assam, Arunachal Pradesh, Nagaland, and Manipur was deferred altogether on security grounds, and only partially revisited from 2020 through a fresh Commission whose most consequential output was the 2022 delimitation of Jammu and Kashmir, which added seven new Assembly seats six in the Jammu region and one in the Kashmir Valley and drew allegations, ultimately unsuccessful before the Supreme Court, that the exercise was designed to dilute the political weight of the Valley relative to Jammu<sup>11</sup>. The result of half a century of freezing and partial delimitation is a Lok Sabha whose constituencies vary enormously in population: some exceed three million electors, others fall below fifty

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<sup>6</sup>The Constitution (Forty-second Amendment) Act, 1976, s. 15 (India) (amending art. 82 to freeze Lok Sabha and State Assembly seat allocations at 1971 Census levels until the first census after 2000).

<sup>7</sup>Vidhi Centre for Legal Policy, *The Impact of Constituency Freeze (Part 2)* (May 29, 2026), <https://vidhilegalpolicy.in/blog/the-impact-of-constituency-freeze-part-2/>.

<sup>8</sup>The Constitution (Eighty-fourth Amendment) Act, 2001, s. 3 (India) (extending the freeze to the first census after 2026, while permitting boundary readjustment within existing seat totals using 1991 Census data).

<sup>9</sup>Supra note 5; Wikipedia, *Delimitation Commission of India*, [https://en.wikipedia.org/wiki/Delimitation\\_Commission\\_of\\_India](https://en.wikipedia.org/wiki/Delimitation_Commission_of_India).

<sup>10</sup>Supra note 9.

<sup>11</sup>Constitutionofindia.net, *Should Courts Review Delimitation?* (June 23, 2025), <https://www.constitutionofindia.net/blog/should-courts-review-delimitation/>.

thousand<sup>12</sup>. This malapportionment is the backdrop against which the 2026 reform was attempted, and the Jammu and Kashmir precedent is instructive: it shows that even a technically completed, narrowly-scoped delimitation exercise can generate lasting allegations of engineered political advantage a concern that scales considerably when the exercise in question determines the composition of the national Parliament itself.

### III. The 2026 Legislative Package and Its Defeat

#### A. *The Three Bills*

The government's 2026 package sought to resolve the freeze through three coordinated instruments. The Constitution (One Hundred and Thirty-First Amendment) Bill, 2026 proposed to revert to the principle that Lok Sabha seats be allocated strictly in proportion to state population, raise the ceiling on the House's total strength from the existing maximum of 550 to 850 (of which up to 815 seats would go to states and 35 to Union Territories), and transfer from the Constitution itself to ordinary parliamentary legislation the power to decide which census would govern future delimitation exercises<sup>13</sup>. The accompanying Delimitation Bill, 2026 supplied the machinery: it directed that the delimitation triggered by this amendment use the “latest published census as on the date of the constitution of the Delimitation Commission” which, given that the 2011 Census remains the most recently published complete census, meant that delimitation would proceed on 2011 population figures rather than waiting for the ongoing census to be finalised<sup>14</sup>. It also prescribed the Commission's composition: a retired Supreme Court judge as Chairperson, appointed by the central government, the Chief Election Commissioner or a nominated Election Commissioner, and the State Election Commissioner of the concerned state<sup>15</sup>. The Union Territories Laws (Amendment) Bill, 2026 made consequential changes for Delhi, Puducherry, and Jammu and Kashmir.

The choice to use the 2011 Census rather than the ongoing census was deliberate and, on the government's own account, expedient. The reference date for the current census is 1 March 2027, and given that the next general election is due in 2029, a delimitation exercise based on that census could not realistically be completed in time with the further consequence that the one-third reservation for women in the Lok Sabha and State Assemblies, introduced by the Constitution (One Hundred and Sixth Amendment) Act, 2023, the Nari Shakti Vandan

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<sup>12</sup>Supra note 9.

<sup>13</sup>Supra note 1.

<sup>14</sup>Supra note 1 (Delimitation Bill, 2026, cl. 3).

<sup>15</sup>Supra note 1 (Delimitation Bill, 2026, cl. 5).

Adhiniyam, and made contingent on a delimitation exercise following the first census after that Act's commencement, would not take effect for the 2029 election either<sup>16</sup>. By anchoring delimitation to the already-published 2011 Census, the government sought to unlock both the seat expansion and the women's reservation in time for 2029.

### ***B. The Vote: Arithmetic of a Constitutional Amendment***

Article 368 requires that a Bill amending the Constitution be passed by a majority of the total membership of each House and by a majority of not less than two-thirds of members present and voting<sup>17</sup>. With five hundred and twenty-eight members present and voting, the Constitution (One Hundred and Thirty-First Amendment) Bill needed three hundred and fifty-two votes in favour. It secured two hundred and ninety-eight, fifty-four short. Because the Delimitation Bill and Union Territories Bill were both drafted on the assumption that the constitutional ceiling on the House's strength, and the power to select the governing census, had already been altered, their fate was sealed by the same vote<sup>18</sup>.

### ***C. The Debate: Women's Reservation as Leverage, and as Casualty***

The government's central rhetorical strategy was to present the package as the vehicle that would finally operationalise women's reservation a reform enacted with broad cross-party support in 2023 but suspended in practice pending delimitation. Home Minister Amit Shah told the House that no southern state would lose seats in absolute terms, and that the five southern states, which together hold 129 of the Lok Sabha's current 543 seats, approximately 23.76 percent, would rise to roughly 195 seats in an expanded 816-seat House, preserving almost exactly their existing share<sup>19</sup>. Opposition members, led by the southern states and the Congress party, rejected both the numbers and the premise. Congress leader P. Chidambaram offered a competing calculation: if seats were reapportioned to current population without any expansion of the House, the five southern states would fall from 129 to 103 seats, a loss of twenty-six, while Uttar Pradesh and Bihar alone would gain heavily<sup>20</sup>. Congress president Sonia Gandhi

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<sup>16</sup>The Constitution (One Hundred and Sixth Amendment) Act, 2023 (India) (Nari Shakti Vandan Adhiniyam); supra note 1.

<sup>17</sup>India Const. art. 368(2); supra note 2.

<sup>18</sup>Supra note 2; The Federal, Three Grounds on Which Delimitation Laws May Be Challenged in Court (Apr. 16, 2026), <https://thefederal.com/the-federal-special/three-grounds-on-which-delimitation-laws-may-be-challenged-in-court-239374>.

<sup>19</sup>The Federal, supra note 18 (quoting Sonia Gandhi describing the Bills as “an assault on the Constitution” and a “real threat”).

<sup>20</sup>Supra note 18.

characterised the exercise as “an assault on the Constitution”<sup>21</sup>. The opposition's second objection was procedural rather than arithmetical: why anchor delimitation to a fourteen-year-old census when a fresh count was already underway, unless the older data produced a more politically convenient outcome<sup>22</sup>.

#### **IV. Federalism Under Strain: Population, Politics, and the “Fertility Penalty”**

The reason a seemingly technical exercise in reapportionment provokes such intensity of political reaction lies in a demographic divergence that has been building for over half a century. Since the 1971 Census upon which the freeze is based, Bihar's population has grown by roughly 215 percent; Kerala's, over the same period, by approximately 70 percent<sup>23</sup>. Projections using 2011 Census data suggest that a strictly population-proportional reallocation of the existing 543 seats, without any expansion, would require redistributing roughly twenty-six seats, with Bihar, Uttar Pradesh, and Rajasthan gaining a combined nineteen and the five southern states losing a corresponding share; using projected 2026 population figures rather than the 2011 Census would produce an even starker shift<sup>24</sup>.

Two political facts sharpen this arithmetic into a live controversy rather than a demographic curiosity. First, the states projected to lose relative representation Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, and Telangana are also states where the ruling party has historically struggled to build an electoral base, making the reform appear, to its opponents, not merely an unfortunate by-product of demographic change but a deliberate transfer of political power toward a different electoral geography<sup>25</sup>. Second, the states losing ground are precisely those that implemented the population-stabilisation policies the freeze was designed to reward, giving rise to what commentators have termed a “fertility penalty”, the perception that decades of investment in female literacy, healthcare access, and family planning are now being repaid with a diminished voice in the national legislature. This perception is sharpened further by the fact that the states facing the steepest relative decline in representation are also disproportionate contributors to India's tax revenues and economic output, producing a felt

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<sup>21</sup>Carnegie Endowment for International Peace, *Delimitation After Defeat: India's Unfinished Debate Over Representation* (2026), <https://carnegieendowment.org/research/2026/05/india-parliament-lok-sabha-representation-reapportionment-vote-women-elections>.

<sup>22</sup>Id.

<sup>23</sup>Id.

<sup>24</sup>NUS Institute of South Asian Studies, *Delimitation of Constituencies in India: Southern States Up in Arms*, <https://www.isas.nus.edu.sg/papers/delimitation-of-constituencies-in-india-southern-states-up-in-arms/>.

<sup>25</sup>Supra note 21.

mismatch between fiscal contribution and political voice<sup>26</sup>.

The government's rebuttal, that an expanded House allows every state's absolute seat count to rise even as relative shares are rebalanced is not without force and deserves to be taken on its own terms. Under the “everybody gains” model advanced by Home Minister Shah, Kerala's seats would rise from twenty to thirty even as its national vote-share, in percentage terms, holds roughly constant<sup>27</sup>. If accurate, this framing recasts the debate: no state's absolute representation is reduced, and the perception of loss is a function only of relative share. The difficulty is that this reassurance is not written into the Bills themselves. The Constitution (One Hundred and Thirty-First Amendment) Bill fixed a ceiling on the House's total strength and reverted to a strict proportionality principle, but nothing in its text guaranteed that any future delimitation exercise, whether conducted this decade or in 2031 or 2041, would preserve that ratio, or even that the House would remain expanded rather than contracted by a future amendment. A political assurance offered on the floor of the Lok Sabha binds neither future Parliaments nor future Delimitation Commissions. It was precisely this absence of a binding floor rather than the seat numbers themselves that animated the southern states' response.

That response was organised, and pre-dated the 2026 Bills by several years. Tamil Nadu Chief Minister M.K. Stalin convened a Joint Action Committee for Fair Delimitation in Chennai, bringing together the chief ministers of four southern states, who jointly demanded that the freeze be extended for a further twenty-five years rather than allowed to lapse in 2026<sup>28</sup>. Their argument was structural rather than merely self-interested: that a purely population-based formula converts a demographic achievement into a permanent constitutional handicap, and that no formula proposed by the Union government, whether based on a frozen 543 seats or an expanded 816, avoids reducing the South's bargaining weight relative to a scenario in which the freeze simply continues.

## **V. The Pretermitted Question: Does Article 368(2) Demand State Ratification?**

Beneath the political argument lies a doctrinal one that received comparatively little attention during the April 2026 debate but is likely to dominate any renewed attempt at reform:

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<sup>26</sup>Supra note 2 (statement of Home Minister Amit Shah).

<sup>27</sup>Supra note 24.

<sup>28</sup>Id.

whether a Bill redistributing the number of Lok Sabha seats allotted to each state can be validly enacted by Parliament acting alone, or whether it falls within the entrenched category of constitutional amendments that additionally require ratification by the legislatures of not less than one-half of the states, under the proviso to Article 368(2).

Article 368(2) ordinarily requires only that a constitutional amendment Bill be passed by each House of Parliament by a majority of the total membership and by not less than two-thirds of members present and voting. Its proviso, however, carves out a specific list of subjects for which this parliamentary majority, however large, is insufficient: amendments to these provisions additionally require ratification by the legislatures of at least half the states before presentation to the President for assent. That entrenched list includes, among other items, the manner of election of the President, the extent of the executive power of the Union and the States, the provisions dealing with the Supreme Court and High Courts, the distribution of legislative powers between the Union and the States, any of the Lists in the Seventh Schedule, and most pertinently “the representation of States in Parliament”<sup>29</sup>.

The government's position, implicit in its choice to proceed through an ordinary two-thirds vote in each House without seeking state ratification, appears to be that the 131st Amendment Bill altered only the machinery for determining seat allocation specifically, the census-selection mechanism and the overall ceiling on the House's size rather than “the representation of States in Parliament” itself. On this reading, the entrenchment clause protects only the foundational principle that states are represented in Parliament at all, as opposed to, say, abolishing bicameralism or federal representation altogether, and does not extend to the periodic, technical recalibration of how many seats each state receives, which Article 82 already contemplates as an ordinary, recurring legislative exercise.

That reading is plausible but not self-evidently correct, and it has not been judicially tested. A rival reading holds that “the representation of States in Parliament” refers precisely to the question the 2026 Bills sought to resolve: how many seats each state holds relative to the others. On this view, a Bill that fixes a new ceiling of 850 Lok Sabha seats, reverts to a strict population-proportionality principle, and empowers ordinary parliamentary legislation to select the governing census thereby determining, as a direct and foreseeable consequence, that

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<sup>29</sup>India Const. art. 368(2), proviso.

some states gain dozens of seats while others gain few or none is not merely adjusting machinery but altering the substance of how states are represented in the Union legislature, and should accordingly require ratification by half the state legislatures before it can bind them. Commentators examining the Bills during the special session identified this proviso as the strongest available ground for a future challenge, precisely because it is the most textually grounded and least politically contentious of the arguments available it turns on the interpretation of a single constitutional clause rather than on disputed projections of population growth<sup>30</sup>.

The distinction matters because it changes who must be persuaded. A reform package that can be enacted by a two-thirds majority in a Parliament where the ruling coalition already commands a working majority is, in practice, primarily a negotiation with the opposition benches. A reform package that additionally requires ratification by half of India's state legislatures is a negotiation with the states themselves including states already organised collectively against the substance of the proposal. If the Article 368(2) proviso does apply, no future version of this reform can proceed without the consent of a coalition of states that includes, or at least neutralises, the very southern bloc that mobilised against the 2026 Bills. This would transform delimitation from a matter of Lok Sabha arithmetic into a matter of federal bargaining, arguably restoring the constitutional balance the freeze was designed to preserve in the first place, this time through procedure rather than through demographic suspension.

## **VI. Judicial Review of Delimitation: From Absolute Bar to Qualified Scrutiny**

Even if a future version of the reform clears both the ordinary parliamentary majority and, if required, state ratification, it would not necessarily escape judicial scrutiny, though the scope of that scrutiny has shifted markedly since the framers first insulated delimitation from the courts.

Article 329(a) provides, through a non-obstante clause, that “the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies... shall not be called in question in any court”<sup>31</sup>. When this bar was first tested, in *Meghraj Kothari v. Delimitation Commission*, a five-judge Constitution Bench read it as an almost absolute

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<sup>30</sup>The Federal, supra note 18.

<sup>31</sup>India Const. art. 329(a).

ouster of jurisdiction, reasoning that if delimitation orders were not treated as final, any voter could hold up an election indefinitely by challenging the delimitation of constituencies from court to court<sup>32</sup>. For over five decades, this reasoning was applied to dismiss challenges to delimitation orders at the threshold, with at least one High Court characterising the bar as altogether “unsurmountable”<sup>33</sup>.

That position has softened considerably in recent years. In *Dravida Munnetra Kazhagam v. Secretary, Governor's Secretariat*, the Supreme Court, interpreting the materially identical bar under Articles 243-O and 243-ZG governing panchayat and municipal delimitation, held that such provisions do not impose a complete bar on judicial intervention, and that a constitutional court retains the power to act where an order is shown to be mala fide or an arbitrary exercise of power<sup>34</sup>. That principle was affirmed by a three-judge Bench in *State of Goa v. Fouziya Imtiaz Shaikh*<sup>35</sup>, and applied directly to Article 329(a) itself in 2024, when the Supreme Court in *Kishorchandra Chhanganlal Rathod v. Union of India* set aside a Gujarat High Court ruling that had treated the bar as a complete jurisdictional wall. The Court held that while Article 329(a) undeniably restricts the scope of judicial scrutiny, it cannot be construed to impose an absolute bar on every action taken in the course of a delimitation exercise, and that where an order is manifestly arbitrary and irreconcilable with constitutional values, a constitutional court retains the power to grant appropriate relief<sup>36</sup>.

This doctrinal evolution matters for the delimitation exercise contemplated by the 2026 Bills in at least two respects. First, clause 10(2) of the Delimitation Bill, 2026 was drafted to carry forward the traditional no-challenge formula, insulating the eventual Commission's orders from review in the manner Article 329(a) already contemplates for ordinary delimitation legislation<sup>37</sup>. Under *Kishorchandra*, that insulation would no longer be treated as absolute; a state or citizen alleging that the resulting seat allocation was manifestly arbitrary, or motivated by considerations extraneous to the constitutional text, would have a plausible, if narrow, route

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<sup>32</sup>*Meghraj Kothari v. Delimitation Commission*, (1967) 1 S.C.R. 400 (India).

<sup>33</sup>Law and Other Things, *Dissecting the Intent of Article 329(A): Judicial Review on Unconstitutional Delimitation Orders to Facilitate Lawful Elections* (Jan. 21, 2025), <https://lawandotherthings.com/dissecting-the-intent-of-article-329a-judicial-review-on-unconstitutional-delimitation-orders-to-facilitate-lawful-elections/> (noting the Andhra Pradesh High Court's characterisation of the Article 329(a) bar as “unsurmountable” in *G. Prasada Rao v. Election Commission of India*).

<sup>34</sup>*Dravida Munnetra Kazhagam v. Secretary, Governor's Secretariat*, (2020) 6 S.C.C. 548, ¶ 14 (India).

<sup>35</sup>*State of Goa v. Fouziya Imtiaz Shaikh*, (2021) 8 S.C.C. 401 (India).

<sup>36</sup>*Kishorchandra Chhanganlal Rathod v. Union of India*, 2024 INSC 579 (India).

<sup>37</sup>*Id.*

into court<sup>38</sup>. Second, and more fundamentally, the Constitution (One Hundred and Thirty-First) Amendment Bill itself is not “a law relating to the delimitation of constituencies” within the meaning of Article 329(a); it is a constitutional amendment altering the framework within which a future delimitation law would operate. Article 329(a), on its terms, shields ordinary delimitation legislation and Commission orders, not the constitutional amendment that authorises them. A challenge to the 131st Amendment Bill's validity, whether on the Article 368(2) ratification ground discussed above or on basic-structure grounds, would accordingly fall outside Article 329(a)'s protective shadow altogether.

The basic-structure argument, though more diffuse, is not without foundation. Judicial review has itself been held to be part of the Constitution's basic structure, immune from exclusion even by constitutional amendment<sup>39</sup>. Federalism, too, has been recognised as a basic feature of the Constitution<sup>40</sup>. A future litigant might argue that a constitutional amendment which both alters the federal balance of representation among states and forecloses meaningful review of the consequences through a renewed no-challenge clause compounds two basic-structure infirmities at once, though this argument, unlike the Article 368(2) proviso point, would require a court to characterise reapportionment itself, rather than merely its judicial reviewability, as touching the Constitution's federal core, a considerably higher threshold than the basic-structure doctrine has traditionally reserved for the most fundamental alterations to constitutional identity<sup>41</sup>.

## VII. Lessons from Comparative Constitutionalism

India is not alone in confronting the tension between population-based representation and federal equity, but the institutional responses developed elsewhere reveal a design choice that India's Constitution never made.

The United States resolved an analogous dispute at its founding through the Great Compromise: the House of Representatives would be apportioned strictly by population, while the Senate would give every state, regardless of size, exactly two seats<sup>42</sup>. The House's own commitment to population-based apportionment was later reinforced by the Supreme Court's

<sup>38</sup>The Delimitation Bill, 2026, cl. 10(2); supra note 1.

<sup>39</sup>*L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261 (India).

<sup>40</sup>*S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1 (India).

<sup>41</sup>*Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

<sup>42</sup>U.S. Const. art. I, § 2 (House); id. art. I, § 3 (Senate); The Great Compromise of 1787.

“one person, one vote” jurisprudence in *Wesberry v. Sanders*, which held that congressional districts within a state must be drawn to be as nearly equal in population as practicable<sup>43</sup>.

Crucially, this strict population principle in the House is politically survivable in the American system precisely because it is counterbalanced by the Senate's equal-state representation: a smaller or slower-growing state that loses influence in the House retains full parity in the Senate. India's Rajya Sabha offers no equivalent counterweight: seats in the Council of States are allocated among the states not equally, but according to population under the Fourth Schedule<sup>44</sup>, meaning that a state which loses ground in the Lok Sabha because of low population growth suffers a broadly similar disadvantage in the Rajya Sabha. India's bicameral structure, in other words, was never designed to insulate any chamber from demographic change; the freeze on Lok Sabha seats performed that insulating function by other means. Once the freeze lifts, no institutional safeguard remains.

The United Kingdom offers a different model: delimitation, there termed “boundary review,” is conducted by four independent Boundary Commissions, whose proposals are subject to parliamentary approval but are largely insulated from substantive judicial review. Courts have nonetheless indicated a willingness to intervene where a Commission acts with manifest unfairness or irrationality, as the Court of Appeal noted in *R v. Boundary Commission for England, ex parte Foot*, even while declining to strike down the boundaries actually challenged in that case<sup>45</sup>. The American experience with racial and partisan gerrymandering offers a further, if imperfect, analogy: in *Shaw v. Reno*, the U.S. Supreme Court held that electoral districts whose shape is explicable only by reference to race can be challenged under the Equal Protection Clause, establishing that population-proportionality is a necessary but not sufficient condition for constitutionally valid districting the manner of achieving proportionality matters as much as the result<sup>46</sup>. India's delimitation disputes are not, at least explicitly, about racial districting, but the underlying constitutional insight travels: a facially neutral principle of population-based allocation can nonetheless be challenged if its practical operation is shown to systematically entrench the political dominance of one region over a definable and cohesive political community precisely the objection the southern states have raised against the 2026 Bills, framed not as a claim of intentional discrimination but as one of

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<sup>43</sup>*Wesberry v. Sanders*, 376 U.S. 1 (1964).

<sup>44</sup>India Const. sch. 4.

<sup>45</sup>*R v. Boundary Commission for England, ex parte Foot*, [1983] Q.B. 600 (Eng.).

<sup>46</sup>*Shaw v. Reno*, 509 U.S. 630 (1993).

unaddressed structural disparate impact.

Canada offers perhaps the most directly transplantable precedent. Section 51 of the Constitution Act, 1867, as amended, allocates House of Commons seats among the provinces by population, but subject to two entrenched exceptions: the “senatorial clause,” added in 1915, which guarantees that no province will hold fewer seats in the House of Commons than it holds in the Senate, and the “grandfather clause,” introduced in 1985 and periodically updated, which guarantees that no province's seat count will fall below the number it held in a specified earlier Parliament, regardless of subsequent population decline elsewhere<sup>47</sup>. A further “representation rule” ensures that a province historically over-represented relative to its population share remains at least proportionately represented even after reapportionment. Together, these three rules allow Canada's House of Commons to grow in overall size, and to reallocate seats toward faster-growing provinces, without ever reducing any province's absolute number of seats precisely the entitlement that the Indian government asserted, but did not entrench, in the debate over the 2026 Bills<sup>48</sup>.

### **VIII. Towards a Constitutional Settlement**

Three modest but concrete reforms could reduce the recurrence of this impasse. First, following the Canadian model, any future reapportionment Bill should embed an explicit, textual floor guaranteeing that no state's post-delimitation seat count falls below its pre-delimitation count, and that no state's seat share, expressed as a percentage of the House, falls below its existing share converting the government's political assurance of “everybody gains” into an enforceable constitutional commitment rather than a debating point that binds no future Parliament.

Second, given the argument developed in Part V, any such Bill would rest on firmer constitutional footing, and would be likelier to command the trust of the states whose relative position it changes, if the government voluntarily sought ratification under the Article 368(2) proviso rather than relying on a two-thirds majority in Parliament alone treating the requirement as a floor for legitimacy rather than merely a litigation risk to be managed after

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<sup>47</sup>Constitution Act, 1867, s. 51A (Can.) (“senatorial clause”, added 1915); Library of Parliament (Canada), The Process for Readjusting the Seat Count in the House of Commons and the Boundaries of Electoral Districts, [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/202227E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202227E) (describing the “grandfather clause” and “representation rule”).

<sup>48</sup>Id.

enactment.

Third, Parliament could consider decoupling the operation of the Nari Shakti Vandan Adhinyam's women's reservation from the broader reapportionment fight entirely, by amending the 2023 Act to permit its implementation on the existing, frozen seat allocation, rather than making a socially consensual reform hostage to a federally contentious one<sup>49</sup>. None of these measures resolves the underlying demographic tension between a populous north and a slower-growing south; but each would ensure that when that tension is next confronted, as it must be once the ongoing census is finalised, it is confronted through a process whose legitimacy is not immediately contested by the very states whose representation is at stake.

## IX. Conclusion

The defeat of the Constitution (One Hundred and Thirty-First Amendment) Bill, 2026 has been widely reported as the end of an episode. It is better understood as a postponement. The freeze that the Eighty-Fourth Amendment extended to the first census published after 2026 has not been lifted; it has simply not yet been validly replaced. The demographic divergence between India's northern and southern states has not narrowed since April 2026, and the ongoing census, once finalised, will only sharpen the numbers that animate this dispute. What the episode has usefully surfaced, in the meantime, is a genuine and previously under-examined constitutional question — whether the representation of states in Parliament can be redrawn by Parliament alone, or whether the states themselves must consent and a judicial doctrine, only two years old, that no longer treats delimitation as wholly beyond the courts' reach. The next attempt at reform, whenever it comes, will have to reckon with both.

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<sup>49</sup>Supra note 16.