

CAMBRIDGE CONFERENCE

ON

ELECTORAL DEMOCRACY

Enfranchising Disadvantaged, Displaced, Marginalised and Minority Citizens

Context

In a world with porous borders, mobility of large populations is now the norm rather than the exception. The notion of a consolidated state is increasingly under threat - no country, whether it be 'east or west', is singularly united. India, for example, has one of the world's largest Muslim populations. Sixteen million Indian citizens now work overseas, eclipsing the population of many countries. Its neighbour, Pakistan has equally large immigrant populations. The UK, seemingly united, but with the 'Act of Union' now under threat from the Scottish who are now a very powerful minority in the UK Parliament. The single EU 'experiment', now 50 years old, is stressed in the face of large scale population movements of desperate people displaced from Africa. In Australia, lauded universally for its successful integration of new citizens, immigration programs are experiencing seismic shifts in their makeup that will challenge that decades long success and which must be faced by government if the benefits of a diverse yet integrated society is to continue.

Even in democracies as lauded as India's, there are worrying signs that Muslims are being treated as second class citizens, and that some of the secular traditions of democracy are potentially being undermined. At the same time, societal diversity is challenging the traditional practices of EMBs based on assumptions of homogeneity of citizens. The issue of enfranchising minorities and the marginalised is therefore relevant to both mature and developing democracies.

Throughout the emerging world, urbanisation is on the rise. In rural areas, participation tends to be greater; and yet city populations are increasingly driving developing countries' economic growth. The requirement to register and vote in a particular area, with a voter card reflecting that area, is increasingly disenfranchising those workers on the move. This is tantamount to involuntary disenfranchisement because of economic factors. "Outocracy", a term used to describe the phenomena of migrant workers being excluded from the democratic process, is particularly the case in local elections, where "the sons of the soil", the original inhabitants of a region, are excluding more recent arrivals, who themselves are cautious not to be seen to destabilising the established political order lest they be excluded economically as well.

A central question emerging from these developments is the credibility of the electoral system. Whilst the principle of universal suffrage dictates that the interests of all minorities must be protected, complexities challenge the nature of any response. In India, for

example, First Past The Post (FPTP) systems have seen the BJP win more than half the seats in Parliament with only a third of the votes. In these circumstances, can majoritarian rule be counted on to protect the interests of minorities? Alternatively, adopting PR systems, as some have suggested to address the deficiencies of FPTP systems, can lead to instability and unholy alliances. Regional minorities now have the ability to strip entire political parties from power; and the connection between systems of proportional representation (PR) and minorities' inclusion in the electoral process is now so stark that to deny, or ignore its existence risks unpredictable electoral outcomes.

Key issues underlying an EMB's approach to marginalised persons

Three key issues can underpin an EMBs approach to considering marginalised persons. First, what is the appropriate link between a person's location and their right to vote? Second, is there a compelling reason to have a national electoral roll, and third, logistical issues associated with election management more generally, such as the number of ballot papers needed in particular areas? These questions, needed to be satisfactorily addressed before significant progress could be made on marginalised and minority persons.

Types of marginalisation

Three distinct rights that need to be protected for minorities: (i) improving electoral access, (ii) improving the framework for political participation, and (iii) providing adequate electoral representation in governance processes.

Marginalisation was often an issue of perception rather than reality. These politically efficacious and deep-seated perceptions are often driven by religious or ethnic differences. As such, these perceptions are difficult to counter. Some groups tend to regard themselves as excluded, and to make demands on the Commission in light of this belief. For example, efforts to establish smaller polling places to allow easier accreditation and voting, is perceived by some groups as favouring others, even though favouritism is far from the intention. Close consultation with members of diverse groups, and to manage all complaints transparently, is encouraged. This can assist in exposing the implausibility of some accusations. Political parties' official lines on favouritism, however, are difficult to change.

Collective descriptions mask a complex array of citizens potentially disenfranchised and needing tailored responses

In examining the nature and extent of marginalisation, it is important to understand that electoral disadvantage can arise from many different circumstances and contexts. An EMBs approach to marginalisation needs to recognise that there is no single homogenous group. The following categorisation may be helpful, noting that the categories are by no means exclusive, and with many of the overlapping issues.

- (i) **women** remain the largest group of disadvantaged citizens whose franchise is threatened. This disadvantage often has deep societal and cultural roots that are

difficult to overcome irrespective of initiatives adopted by EMBs or legislative or constitutional responses such as quotas. Some EMBs have developed a 'gender policy' to improve the framework for improving women's participation;

- (ii) **transgendered persons** can be provided with options for voter registration using categories other than male or female. For example, a category of 'other' or 'other gender' may be less confronting than traditional forms of gender classification. An EMB can engage with representative groups, if they exist overtly;
- (iii) **homeless persons** do not normally meet strict qualifications of residence for registration. An EMB can consider systems that allow for a person to be registered at the shelter where the person is regularly staying, despite the absence of formal proof of residence. A shelter manager's attestation can be an acceptable form of evidence;
- (iv) **disabled persons** may need to be provided with facilities at polling booths such as wheelchairs, sign-language interpreters and so on. Yet, very few voters actually take advantage of such facilities. International human rights obligations cannot be ignored, especially if a country is a signatory to human rights conventions, yet special measures are expensive to maintain when facilities go unused. Managing this conflict of priorities is a challenge for EMBs;
- (v) **persons affected by violent extremist groups** may require special security measures to be put in place to allow such persons to vote. Developing relationships with security agencies based on shared values and commitment to democratic processes is a critical success factor for an EMB in such circumstances;
- (vi) **nomads** lack either an adequate understanding of the voting process or proximity to places for registration. EMBs can engage local populations in order to offer them electoral literacy, relaxed residence qualifications and asking polling officers to assist in voter registration. Unless a more flexible approach is taken, the legal requirements for registration can worsen the position of certain minorities. Some are simply unable to acquire the documents necessary for registering to vote. Nomadic communities lack birth certificates, passports, and proof of residence, notwithstanding access to centres where it was possible to generate these documents. Accordingly, launching an otherwise commendable voter registration exercise may immediately and inherently disadvantage these groups. Moreover, during election time itself, many nomadic groups have to travel to polling booths many miles away in order to register and cast their votes;
- (vii) **internally displaced persons** (for example, those fleeing natural disasters) can be provided with postal ballot papers to be filled-in at camps and sent securely to the voters' home constituencies for counting. Care must be exercised as in some cases those authorities in charge of camps may exert undue influence in the way in which the displaced persons voted.
- (viii) **internal migrant workers**, given the nature of their employment, move residence across constituencies many times a year. The most problematic issue is policy

governing the link between ordinary residence and voter choice. If, for example, the appropriate link between geography and a person's vote was purely 'optional', then a person belonging to a minority could contribute her vote to a 'solid bloc', in a location where he or she may not currently reside, but to where they believed they could move if in need of safety.

Laws for registration are often based on minimum periods which cannot be strictly met. EMBs can assist by helping internal migrants' register as frequently as possible, and on providing them with means of transport to their relevant polling stations. Often, special efforts to register internal migrant workers are not completed quickly enough to allow them to vote in a near-term election.

In many countries the franchise of migrant communities is protected by the Constitution and, in the context of Parliamentary elections, can be assured. However, their position in local elections is less protected, where migrant communities, living within larger communities, made inter-community agreements with the 'locals' that they would restrict their vote to national elections (thereby omitting to vote in local ones). This is a conscious choice made by migrants to bolster protection from the violence that their political impact had previously sparked.

- (ix) ***non-resident citizens (diaspora)*** have sometimes been accommodated legislatively by allowing them to return to their home constituencies to cast their vote. Not surprisingly, very few do so - the requirement of returning home is too cumbersome, even for those motivated to vote. In other cases, laws have been changed to allow diaspora to vote overseas, but this entails considerable expense and in many respects offers little advantage to voters because voting facilities can still be too remote or limited. Postal voting is another option, but can be affected by delays, both in distributing ballots and their return. Traditional postal services in many countries are being wound back because of unprofitability. To overcome some of the delay, systems are being designed to allow ballots to be downloaded from the internet for subsequent return by post, as is the case in New Zealand. Demands for electronic voting are increasing, although many issues are yet to be resolved. Success of these measures for NRIs could inevitably lead to demands that the facilities be offered to the broader citizenry, leading to immense electoral change.

Legal sources of marginalisation of diaspora also need to be recognised. For example, in some countries diaspora-voting was only permitted when exchange-rates were low, and with no provisions being made for a PR system.

Approaching diaspora voting may best be done in small steps, for example, by starting with overseas deployed defence forces.

- (x) the franchise ***ethnic minorities*** can be facilitated by, for example, creating and implementing a rule requiring electoral rolls to be offered in any language spoken by more than twenty percent of the population in a given constituency.

- (xi) **religious minorities** can be assisted by ensuring that no polling booth be located in or close to religious monuments or places of worship. Non denominational voter education program are critical. Surveys of these groups were also regularly conducted of voters to better understand their concerns and needs.
- (xii) election workers can indirectly be disenfranchised through lack of opportunity caused by their responsibilities or being absent from their constituencies. In India for example, some 11 million people work on the election itself. Special mechanisms may need to be put in place to ensure that they are not disenfranchised In India for example, a special certificate was provided, which election workers could present to officials in order to claim their votes at a time other than polling day.

What is the role of an “independent EMB”

Some argue that a Commission should never transgress their mandate: the strength and efficiency of a Commission lies in achieving its remit to the best of its ability according to the law. Counteracting socioeconomic disadvantage is a task for politics and the rest of civil society, and a Commission should not to get involved in such issues.

Another perspective is that even though constitutions often protect the democratic and cultural rights, of minorities, a Commission should not specifically set out to look for groups and structure the electoral process around them. This sort of work can result in solidification of differences, rather than eradication, of perceived differences. It threatens to encourage persons to identify themselves primarily as group-members, as opposed to citizens of the country. The historical background to minorities' situations, often coming from a colonial history of divide and rule, cannot be ignored by those who strive to overcome disadvantages. Attempts to ensure inclusion may best be managed by simply requiring the protection of group rights.

An alternative view is that Commissions do (and should) make use of their means, especially in mid-term periods, to highlight minority issues, discuss them with appropriate bodies, and encourage social mobilisation. It is argued that such activity is not beyond a Commission's legitimate mandate. Nevertheless, irrespective of whether the impetus for countering social marginalisation comes from civil society or a Commission, incentives for change are hard to create in the absence of legal sanctions.

An EMB needs to recognise the political and cultural implications arising from efforts to enfranchise minorities

Registering large numbers of internal migrant workers could lead to political misrepresentation, for example by contributing to the delimitation of constituencies. Moreover, these migrants could be subject to undue political influence, say their by their employers?

Inevitably, internal migrants, whether driven by employment or involuntarily displaced, will lead to arguments about the constitutional notion that people must be “ordinarily resident”, based on a concept of people being settled. There may well be an argument that NRIs are

not subject to taxation and should therefore not expect to have the same rights to vote as those workers inside a country. On the other hand, migrant workers do remit money back home and this is a key part of an economy, and this makes a difference to the strength of the latter's claims for democratic influence.

Ethnic and religious minorities can result in a certain amount of clustering, understandably driven by a desire for “safety in numbers”. Such minorities could well vote in ‘blocs’ affecting the balance of the political incumbency. The phenomenon of religious clustering and bloc-voting, for instance, can give rise to an entire new political parties, as it had done in India in one State.

Whilst inclusion can be argued to be the main aim of Commissions, marginalised persons do not necessarily remain marginalised during election periods. In an environment in which all are being animated to get out and vote, minorities are often exploited by politicians who see them as important political means. Sometimes, therefore, the inclusionary aims of Commissions can align with the interests of politicians. This can compromise a Commissions’ own autonomy and perceived independence. For example, it has been argued that efforts by the Commission to bring in the vote of the under-employed youth in India favoured the current government. This serves as a reminder of the gap between Commission’s noble intentions and the harsh realities on the ground – that is, between Commissions’ efforts to ensure fair and inclusive electoral procedures and the less-than-fair outcomes.

EMBs can act as role models by employing disadvantaged groups or, as a minimum, removing any overt discrimination against them

Organisational design of Commissions especially newly emerging Commissions, can assist by having divisions were specifically devoted to minorities, migrants and the marginalised. Moreover, employment practices of Commissions should ensure that there is no overt or cultural discrimination against marginalised groups.

Depending upon context, Commissions can “lead by example” by establishing codes of conduct for minority inclusion. For instance, quotas for women, or mandating that senior Commission members need to be women or of the opposite gender.

Political parties should be encouraged to also address the sources of marginalisation

Political parties can be encouraged to revise their constitutions in order to accommodate the relevant minorities. Often, such constitutions presented major obstacles for women in particular to gain offices, posts and membership more generally. In South Africa for example, progress was largely the result of a ruling party’s taking a decision to get women involved in legislation. In South Africa, 46% of parliamentarians are women. And in the ruling party itself, women had become a very powerful group. So making sure women gained office could indeed help facilitate further change on the ground.

In relation to the ability of minority groups to hold political office, Commissions can encourage political parties to put forward candidates belonging to minorities such as women and youth. However, experience suggests that they are rarely keen to follow such advice, fearing that minority-members, would appeal less voters to than those candidates drawn from majority-members -democracy is often defined as “the act of seeking votes from the poor and money from the rich and to keep them separate from each other”.

A Commission needs to ensure that disabled voters are provided with equal opportunity regardless of nature of the disability - physical, visual or aural impairment. Equally, political parties are often required by law to cater to the disabled. Still, they favoured the physically-impaired over the two other disabled groups, in order to cut costs.

Marginalisation, then, occurs even among marginalised groups, in another illustration of the 'layers' of discrimination minorities tended to face. Therefore, it is important not to see them as a homogenous only requiring single solutions to address disenfranchisement.

Codes of conduct for political parties can provide for minority inclusion. Legislation may be required - in some cases Commissions can demand that parties put forward a 'zebra' list of members: one male, one female, all the way down to publicise a list of minority-respecting standards, so that the electorate can know what each party stands (or ought to have stood) for.

Legislative responses to marginalisation, such as quotas, need to be managed carefully

Quotas for women candidates are not always successful. For example, with a first past the post system in some countries, quotas for women candidates were met by placing women in the least popular constituencies. This illustrates that there are several layers of disadvantage among women, nomads, the youth and the handicapped. These groups face immense non-legal, socioeconomic factors that limited their seats in Parliament despite often constituting a majority of the electorate. Constitutional change guaranteeing seats in Parliament, as a minimum, may be needed to change the situation.

The societies in which disadvantage was rife, are very often the societies that had successfully introduced legally-required quotas. Yet, pursuing minority representation through quotas may be a 'Pandora's box' - there is a paradoxical quality of how the implementation of inclusionary quotas could serve to solidify divisions, thereby becoming divisive and exclusionary. Context is critical

Efforts to encourage inclusion should be balanced with a need to have an accurate electoral roll

Special measures for addressing marginalised groups may act against an accurate electoral roll, especially where there are strict legislative provisions upon which entitlement to registration is based.