

**RELIGIOUS PLURALISM, CULTURAL DIFFERENCES, SOCIAL AND INSTITUTIONAL
STABILITY:
WHAT CAN WE LEARN FROM INDIA?
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Professor Domenico Amirante

Professor for Public and Comparative Law at Naples II University

Email: do.amirante@gmail.com

**Investing on diversity:
Indian federalism in comparative perspective**

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Abstract

India and the EU face a similar challenge: how to democratically govern a polity of continental dimensions and confusing heterogeneity? This question forms the core of my presentation, yet it starts one step before. Acknowledging how unusual (and untested) the comparison between the Indian nation-state and the supranational EU is, the paper first discusses whether it is at all

possible to compare these two polities - and what methodological challenges this will entail. Concluding nevertheless that these challenges can be met, the paper analyzes the structure and evolution of Indian federalism and federal democracy since independence in 1947. On this basis, it compares the Indian model of federal democracy with that of the EU – and observes two distinctly different approaches. While the Indian model is one of electoral federalism where federalism takes place at the ballot box as regional parties voice local and regional interests and vie for seats in the central parliament, the European model is rather one of executive federalism where regional interest representation is delegated to state governments which are represented in a second chamber that takes major influence on central level decision-making.

1. The legal appreciation of diversity: a new frontier for comparative law.

In a globalized and inter-dependent world, after the fall of the illusory myth of uniformity, the recognition of diversity is increasingly acknowledged as the normal condition of human and societal relations. In terms of legal thought, still characterized by a mainstream positivist orthodoxy, this assumption requires a deep revision of the traditional paradigms that were formerly based on the quest for uniformity, considered as the major legal value to achieve. In this perspective the study of legal diversity is appropriate to disclose new trajectories and paths to comparative law and to legal theory in general. The legal appreciation of diversity will lead not only to the comparison between different legal systems (or families) in order to illustrate their cultural foundations and their respective value, but also to study diversity within legal systems and within national states, increasingly exposed, in the garb of globalization, to social diversification.¹ Diversity and multiculturalism have become today essential aspects of many polities and national states (unitary or federal) all around the world, making “East-West” (as well as “North-South”) comparisons vital to understand the present problems of democracy and the future of constitutionalism. Particularly, for constitutional scholars, Asian legal systems are today extraordinarily important laboratories because cultural and ethnic diversity are distinctive characters of their polities, notably in South and South-East Asia. Yet, in order to properly analyze the constitutional dimensions of diversity and multiculturalism we must consider a “missing dimension” of legal multicultural studies (that are concentrating predominantly on the “rights to diversity” from a typical individualistic approach), that is the study of how the structure of the state reflects diversity in terms of its internal framing and organization or, in other words, the acknowledgement of the influence of diversity on state-building and constitutional reform.²

¹ Roger Cotterrel, *It is so Bad to be Different? Comparative law and the acknowledgment of Diversity*, in in Esin Öricü, David Nelken, *Comparative law. A handbook*, Oxford and Portland: Hart Publishing, 2007, p. 91 ss.

² An interesting attempt to integrate this “dimension” in multicultural studies, but predominantly from a political science approach, is the study by Luis Moreno, Cesar Colino, (eds.), *Diversity and Unity in Federal Countries*, McGill-Queen’s University Press, Montreal, 2010; in the same direction see also Yash Ghai (ed.), *Autonomy and Ethnicity. Negotiating Competing Claims in Multi-Ethnic States*, Cambridge : Cambridge University Press, 2000.

Following this path, in Asia the legal approach to diversity should be considered as a key issue for state-building and for the internal institutional organization (or re-organization) of states. But, regardless of this evidence many of the contemporary Asian states are shaped on the model of the western nation-state, resting on the old assumption that every state must be built on a “nation” with a prevailing cultural identity based on one language and often on a single religion. A remarkable exception to this trend is India, where the legal order of the independent Republic was designed, since its beginning, to accommodate cultural, linguistic, religious and social diversity within the framework of a federal state with very peculiar characters.

More recently the crucial role of the Indian experience for the debate on “democracy and diversity” has been recognized by some leading western political scientists like Arendt Lijphart or Alfred Stepan (2007)³ and eventually Indian federalism has been indicated as the most representative example for the construction of a new ideal type of state, the “state-nation”, an institutional framework able to accommodate great socio-cultural and even multinational diversity within one democratic state (Stepan, Linz, Yadav, 2011).⁴

This paper will discuss some features of Indian federalism in the light of the state-nation model (based, inter alia, on the recognition of different cultural traditions, on the support of diverse identities within a state, and on the practice of asymmetrical federalism), in order to lay down the basis for a comparison with some western experiences (like USA, Canada and European democracies), all sharing with India similar problems related to socio-cultural diversity, but trying to solve them differently (from the American “melting pot” approach, to the Canadian “salad bowl” system, to the European “cooperative federalism”). The aim of the paper is to show how the constitutional arrangements typical of the Indian federal democracy (from the recognition of group rights, to the special administrative regime assigned to some communities like the village Panchayats or the scheduled tribes, to the gradual recognition of linguistic States) far from constituting a “fit-for-all model” nevertheless offer very important elements to renovate the legal theory (and practice) of federalism and to look towards the future of multicultural democracies in the age of globalization.

2. Diversity as the foundation of the State: Indian “anticipatory multiculturalism”.

For the Indian state federalism has represented, right from the independence period, a very effective technique for managing diversity and solving the related conflicts. As it has been noted, federal policies to face cultural and ethnic conflicts are strictly related to democracy “which stipulates that the political association or institution (whether statehood, sub-statehood, or tribal or regional councils) that ethnic groups may demand as the fulfillment of their identity needs ...

³ Both of them contributed to a collective book exploring the possibilities to compare the institutional system of U.S.A. and India: K. Shankar Bajpai (ed.), *Democracy and diversity. India and the American experience*, Oxford: Oxford University press, 2007

⁴ Alfred Stepan, Juan J. Linz and Yogendra Yadav, *Crafting State-Nations: India and other Multinational Democracies*, Baltimore and London: The Johns Hopkins University Press, 2011,

must be democratically based and formed by the consent of the 'ethnic' electorate and not to be something 'naturally' given".⁵ The centrality of the democratic method and the far-sighted vision of the founding fathers, trying to combine a federal structure with a strong center, explains the dynamic nature of Indian federalism. As I have reminded in another context⁶ it has received many labels and definitions, from 'quasi-federation' to 'unitary state with subsidiary federal principles'(in the classical definition by Wheare), to 'centralised federalism', all of them showing some discomfort with the traditional criteria of identification and classification of federal states. Without insisting too much on the nature of the Indian state, whose federal character has been authoritatively demonstrated by D. D. Basu,⁷ a realistic definition could be 'a federal State with centripetal tendencies', indicating the multiple possibilities of the federal system to function alternatively as a more decentralized or centralized system, according to the evolution of historical conditions. This view is also in tune with the idea of federalism as a continuous bargaining process between different levels of government ("flexible federalism" in the definition of Balveer Arora).⁸ A distinctive feature of the Indian Union is its attitude to consider cultural and social diversity as the central issue upon which to build the entire constitutional architecture. Isolated institutional arrangements to cope with cultural minorities have been taken in Western countries even before the period of elaboration of the Indian Constitution, but the discourse on multiculturalism as a doctrine and an articulate state policy has developed quite recently, initially in the West and then in the international debate.⁹ This is why the Indian Constitution, as noted, can be said a multicultural document "in the sense of providing for political and institutional measures for the recognition and accommodation of the country's diversity"¹⁰, but it should be defined, in my view, as an 'anticipatory multicultural constitution'. This character of the Indian Constitution and polity is underlined by several Indian scholars contributing to the international debate on the topic, with different approaches. From one side, G. Mahajan proudly asserts that "at a time when Western liberalism advocated neutrality and difference-blind approach, India acknowledged the rights of minorities and valued cultural diversity".¹¹ From a slightly more critical angle, Subrata K. Mitra speaks of fortuitous or "fuzzy" multiculturalism. According to this author the Indian state, in the attempt to combine sarva darma samabhava (equal attitude towards religion) and dharma nirapekshata (religious neutrality), "made effort to acknowledge the salience of individual rights to freedom of religion and equality before the law, and group rights to cultural and religious practices

⁵ Haribar Bhattacharyya, *Multiculturalism in Contemporary India*, in *International journal on multicultural societies (IJMS)*, vol. 5, no. 2, 2003, p.158.

⁶ Domenico Amirante, *India. Si governano così*, Il Mulino, Bologna, 2007, p. 63.

⁷ Durga Das Basu, *Comparative federalism*, New Delhi : Wadhwa, 2008, pp. 144-145.

⁸ Balveer Arora, Douglas V. Verney (eds.), *Multiple Identities in a Single State: Indian Federalism in a Comparative perspective*, New Delhi : Konark Publishers, 1995.

⁹ On this aspects it is sufficient to refer to a recent overview by Will Kymlica, *Liberal multiculturalism: Western models, global trends and Asian debates*, in Will Kimlycka, Baogang He (eds.), *Multiculturalism in Asia*, Oxford : Oxford University Press, 2005, 22-55.

¹⁰ Haribar Bhattacharyya, cit., p. 152.

¹¹ Gurpreet Mahajan, *Indian exceptionalism or Indian model: negotiating cultural diversity and minority rights in a democratic Nation-State*, in Will Kimlycka, Baogang He (eds.), cit., 288.

in its charter of fundamental rights”.¹² In this perspective we can describe the Indian multicultural approach as a mixed and ongoing multiculturalism based on both the recognition of community and group rights in a democratic constitutional framework and a peculiar structure of the state based on asymmetrical federalism and grassroots self-government.

It is very important to insist on the structural aspect because this is the area where the Indian experience is able to offer many hints and suggestions to both the Asian and the global debate on multicultural constitutionalism. An important recognition of this role is offered by Will Kymlicka asserting that India is not only “one of the few countries outside the west to have voluntarily federalized to accommodate minority nationalist claims for autonomy”, but also “seems to have had much less difficulty accepting the principle of asymmetry than many Western multinational federations”.¹³ This makes the Indian model of multicultural federalism an important point of reference not only for other Asian or post-colonial countries but also for Western constitutional systems. The study of Indian federalism thus offers the opportunity to focus on a particular aspect of multicultural constitutional norms and policies, concentrating on the State structure (federalism) and on local government. This will also allow us to redirect the debate on multiculturalism from abstract and general considerations about individual rights or group rights (taken without a reference to the internal constitutional frameworks and legal cultures, like it often happens in international declarations) to more specific analysis of the constitutional strategies for recognition and inclusion of social diversity in the framework of a democratic State. It is revealing that one of the more interesting comparative works concerning the Indian sub-continent in the last decade, based on India and the American experience, was centered on “democracy and diversity”.¹⁴ Significantly, in the introductory essay to this book Arendt Lijphart, underlining the relevance of India for the theoretical and practical study of democracy, was stating that “in comparison with other clear cases of consociational democracy, India has deeper religious and linguistic divisions and also possesses the four basic features of a power-sharing democracy in a more thorough fashion ... it is therefore not only a clear case of power-sharing democracy, but one of the most important and interesting cases in the democratic world of the judicious and effective use of many consociational practices”.¹⁵ The reference to the consociational theory explains also the importance of the Indian experience for the European Union, if we consider the diversity that they both share in terms of languages, national minorities, religions and the common need they have to govern an unified political space without “melting” their different cultures and identities.

3. The “State-Nation” model: why India matters.

¹² Subrata K. Mitra, *Constitutional design, democratic vote counting and India’s fortuitous multiculturalism*, Working Paper n. 4, South Asia Institute, University of Heidelberg, 2001, 7.

¹³ Will Kymlicka, cit., pp. 39-40.

¹⁴ K. Shankar Bajpai (ed.), *Democracy and diversity. India and the American experience*, cit.

¹⁵ Arendt Lijphart, *Introduction. The importance of India-United States comparison for political science*, in K. Shankar Bajpai (ed.), cit., pp. 5-6.

According to Stepan, Linz and Yadav “state-nation is a term introduced to distinguish democratic states that do not, and cannot, fit well into the French-style nation-state model based on a ‘we-feeling’ resulting from an existing or forged homogeneity”.¹⁶ In this perspective (reflecting a political science approach but having very important consequences for legal theory) the critique of the mono-cultural nation-state is imposed by the “mismatch between the political realities of the world we live in and an old political wisdom that we have inherited”. The “old wisdom” sustains that the territorial boundaries of a state must coincide with the perceived cultural boundaries of a nation, and consequently “this understanding requires that every state must contain within itself one and not more than one culturally homogenous nation, that every state should be a nation and every nation should be a state.”¹⁷ For these authors “given the reality of socio-cultural diversity in many of the polities of the world this widespread belief seems to us to be misguided and indeed dangerous since, as we shall argue, many states in the world do not conform to this expectation”. In this approach the core of the state-nation model is illustrated not only by structural and constitutional elements (even if the majority of such states are federal)¹⁸ but also by policies being in strong contrast with the practice of assimilation of all cultural entities in one nation-state. According to this model “state-nations policies stand for a political-constitutional approach that respects and protects multiple but complementary socio-cultural identities” and involve “crafting a sense of belonging (or we-feeling) with respect to the state-wide political community, while simultaneously creating institutional safe-guards for respecting and protecting politically salient multicultural diversities”.¹⁹

The state-nation model is not only opposed to the mono-cultural nation-state but is also differentiated from the “multinational State” (or pure multinationalism). A pure multinational state can be defined as a state where there are different “national” units but no shared common values, so that it can be reduced to an “empty shell” containing units aspiring to get separate statehood, or “at the most, to a confederation rather than a federation”.²⁰ What lacks in a pure multinational state is a common core of shared values centered on the loyalty towards the state, in other words some form of “symbolic attachment to and identification with” the state, that Stepan, Linz and Yadav identify in the “we-feeling” (or *Verfassungspatriotismus*).²¹

For these authors, to be successful in managing a “robust multinational society” in the mould of a state, the state-nation has to fulfill seven different conditions, in a progressive order.²² The first one requires an “asymmetrical federal state” (it can also be a an asymmetrical regional state, but not a symmetrical federal state or an unitary one), because asymmetry is an essential tool to

¹⁶ Alfred Stepan, Juan J. Linz and Yogendra Yadav, *cit.*, p.7.

¹⁷ Juan J. Linz, Alfred Stepan, Yogendra Yadav, ‘*Nation-State’ or ‘State-Nation’? India in comparative perspective*, in K. Shankar Bajpai (ed.), *cit.*, p. 50

¹⁸ The authors specify that “federalism is neither sufficient nor necessary for the establishment of a state-nation” because it “requires a number of diversity-sustaining measures that are not exhausted by federal instruments” (Alfred Stepan, Juan J. Linz and Yogendra Yadav, *cit.*, p. 6)

¹⁹ *Idem.*, pp. 4-5.

²⁰ *Idem.*, p. 12.

²¹ *Idem.*, p. 13

²² *Idem.*, p. 18 ss.

recognize different degrees of autonomy or different powers to diverse groups (this is the case of India, but also, of Spanish regionalism). The second one is the protection, in the constitutional orders, of both individual and collective rights, because while individual rights forge the common identity, collective group-specific rights (from linguistic, to religious, to generally cultural rights) are in certain conditions as pre-conditions to exercise individual rights. The third one (very typical of this approach) requires a parliamentary system of government instead of a presidential or a semi-presidential system. For Stepan, Linz and Yadav the parliamentary system is more desirable because “it creates the possibility of a sharable good”, or more openly “the possibility of other parties, composed of other nationalities, helping constitute the ruling coalition”.²³ The fourth element is the presence of both polity-wide and “centric-regional” parties (where “centric-regional” means regional parties not simply aiming at secession but cooperating and possibly sharing government responsibility with the polity-wide parties). The fifth element is the existence of groups that are politically integrated but not culturally assimilated (they cannot be assimilated given their distinctive ethno-national features): “if the ethno-federal groups sees the polity-wide state as having helped put a “roof of rights” over its head and if the “centric-regional parties are “coalitionable ... then they are politically integratable into the polity-wide state-nation”.²⁴ The sixth and the seventh conditions are typically cultural, consisting respectively in the presence of “cultural nationalist” (versus “secessionist nationalists”) and in the existence of “multiple but complementary identities”. This final condition is very relevant for the state-nation ideal-type because “it is likely that citizens in the multinational society would strongly identify and remain loyal to, both their culturally powerful ethno-federal unit and the polity-wide center”; thus such citizens will have “strong trust in the center because they see the center, and the institutions historically associated with it, as helping to deliver some valued collective goods such as independence from a colonial power security from threatening neighbors, and participation in a large common market”.²⁵

The illustration of the seven conditions to build a “state-nation” shows the relevance of this (predominantly political science oriented) approach to the constitutional debate on diversity in the contemporary multicultural state. The state-nation model presents an original and unusual mix of three constitutional pre-conditions for a multicultural state that are notably: asymmetrical federalism (or regionalism), the recognition of both individual and collective rights and the preference for a parliamentary system of government (instead of the presidential system). These three pre-conditions indicates that the constitutional debate on multiculturalism should broaden its scope from the traditional area of the recognition and protection of minorities by the state (through individual or collective rights) to the re-consideration of the structure of the state itself and of its system of government. For such an exercise the Indian experience (indicated by the above mentioned authors as the “champion” of the state-nation model) offers extremely relevant

²³ Idem, p. 20.

²⁴ Idem, p. 21.

²⁵ Idem, p. 22.

and interesting materials, and requires a substantial effort in practical research and theoretical elaboration by comparative constitutional scholars.

4. Constitutional foundations of Indian multiculturalism: neither “melting pot” nor “salad bowl”.

As I have underlined above, India’s constitutional policy regarding social diversity is anticipatory, manifold, and dynamic. The first trait (anticipation) has to be recognized in the formulations of a multicultural constitutional approach right from the beginning of the Constitution (1947-1950), even before that the notion of multiculturalism became a subject of debate for the political and constitutional sciences (par. 4.1.). The second (multiplicity) is reflected in the plurality of legal and institutional instruments for the affirmation and protection of minorities both on the side of citizen’s status (individual and group rights, par. 4.2.) and of the structure of the State (asymmetric federalism, par. 4.3.). The third element (dynamism) lays in the dynamic and contractual aspect of Indian multiculturalism that is reflected particularly in the changes occurred in sixty years in the composition of the State, through the gradual concession of statehood to different communities, resulting into the present 28 States and 7 Union Territories (par. 4.4.).

4.1. Anticipatory multiculturalism.

The Indian Constitution harbors a panoply of instruments for minority protection, based on an innovative mix of individual and group rights of recognized both to citizens and communities. The original approach of the Constitution to the problems of diversity in Indian society can be illustrated briefly recalling the debate in the Constituent Assembly. In fact, even if the Assembly cannot be regarded as an exact representation of Indian society (especially for its system of election)²⁶, nevertheless it contained a wide spectrum of the social and political movements of the pre-independence period, such as to deserve the definition by G. Austin of “microcosm in action”.²⁷ Certainly, after Partition, the Indian National Congress was absolutely dominant in the Assembly but it goes to its merit to have selected members representative of different political and social tendencies, including an ample range of minorities. According to Austin the representatives of minorities were the 37% of the members elected in the provinces, that is to say 88 members including Christians, Parsees, Muslims, Sikhs, as well as members of the (future) scheduled tribes and scheduled castes. Also political minorities were included, through independent members or “experts”, recommended by the Congress among personalities outside the party, as eminent as B.R. Ambedkar (elected President of the drafting committee) or an experimented lawyer like A. K. Ayyar.

The presence of minorities, the method of unanimity chosen by the Assembly, and the general atmosphere of the debates oriented the Indian Constitution towards a systematic care of minority

²⁶ There was no direct election for the Constituent assembly, its member being designated among the representative of the Provincial legislatures, elected in 1945 (with the addition of some representatives of the formally independent Princely States).

²⁷ Granville Austin, *The Indian Constitution. Cornerstone of a Nation*. Oxford: Oxford University Press; 1966, 1.

rights and different forms of representation of minorities. It was clear from the start that the target of unity had to be reached not by the eradication of diversity but through the protection and the advancement of minorities, indicating in this way a big difference from the American “melting pot” model . Moreover minorities are not considered not as external elements of the system, like in the Canadian “salad bowl” (or “mosaic”) theory, but as the constituent elements of it. Keeping this starting point in mind the framers of the Indian constitution “designed a structure that protected cultural diversity, but in giving content to this idea they differentiated between four kinds of communities - communities based on religion, language, caste and tribe”.²⁸

4.2. The coexistence of individual and group rights.

The most important debate in the Assembly was centered on the attitude of the State towards religion, and particularly on the choice of secularism as the starting point for a multicultural policy. In fact, even if the word “secular state” was introduced in the Constitution only in 1976, through the 42nd amendment modifying the Preamble, the secular nature of the Indian state was strongly affirmed by the Constituent Assembly. Within the Assembly the discussion was very rich and interesting, as a result of the presence of many different orientations, but started from a common standpoint: after Partition the path to be followed by the new Indian state was a secular one. As Nehru strongly highlighted, India was to be “a national state which includes people of all religions and shades of opinion and is essentially secular as a state”.²⁹ But Indian secularism is quite different in its nature from the western secularism, which is based on hostility towards religion and on the construction of a “wall” between state and religion. Some critics may call it “ambiguous” acknowledging that the Constitution “made some allowance for the role played by religion, especially Hinduism, in Indian life” and “also gave statutory recognition to minorities, thereby implicitly accepting the existence of a majority”³⁰. From a different position, others suggest that secularism “is not an exotic concept planted in India from the west ... it grew out of its past history of a wide and general movement in thoughts and feelings which emerges gradually from the intermingling of different groups and communities”.³¹

From a legal point of view the compromise attained by the Constituent Assembly led to a balanced approach, rejecting on the one hand a political recognition for religious groups (as a reaction to the divided system of election under the British Raj), but granting, on the other hand, the right of expression and a certain autonomy to religious minorities.

A general standpoint, opening the Charter of fundamental rights (arts. 12-35) is the principle of non-discrimination that article 15 applies to “religion, race, caste, sex or place of birth”. More important for us is the “freedom of religion”, located within the Charter, and expressed in 4 articles (from 25 to 28) of the Constitution. Article 25 contains a very wide definition for religious freedom, a sort of “umbrella” for religious minorities, echoing various western Constitutions (i.e.

²⁸ Gurpreet Mahajan, cit., 295

²⁹ Quoted in Donald E. Smith, *Nehru and democracy*, Calcutta: Orient Longmans, 1958, p. 147.

³⁰ James Chiriyankandath, *Constitutional Predilections*, in *Seminar*, n. 484, December 1999, 2.

³¹ B.L. Fadia, *Indian government and politics*, Agra: Sahitya Bhawan Publications, 2005, 106.

the American and the Australian) by stating that “all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion”. But this individual freedom is integrated by the following article 26, creating a series of group rights by affirming that “every religious denomination or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law”. On the other side, articles 27 and 28 are more concerned with freedom “against” religions, forbidding the compulsion to pay any taxes related to the maintenance of a particular religion (art. 27), or to impose the attendance to religious instructions or religious worship in educational institutions funded by the state (art. 28). Article 28 also establishes the principle of neutrality of the state in educational matters related to religions by declaring that “no religious instruction shall be provided in any educational institution wholly maintained out of state funds”. The centrality of secularism in the constitutional system was substantially reinforced by the Indian Supreme Court assigning it, in the case *Bonmai vs. Union of India*, the value of a “basic feature of the Constitution”, capable to resist, thus, to constitutional amendments.³²

The main features of Indian constitutional secularism, have been conveniently resumed by Dhavan and Nariman, indicating three fundamental elements: “the principle of religious freedom, which expansively protects all aspects of a religion ... the principles of depoliticization and celebratory neutrality, which prevent the State from being taken over by any one community but permit it to assist all faiths and celebrate their existence as part of the pageantry of India ...the principle of social welfare and reform which requires religions to yield to regulatory and reformative regulations and cleanse their inegalitarian, gender unjust, and other constitutionally unacceptable prescriptions”.³³ According to a more critical approach “Indian secularism represented the outcome of contradictions: between the secular form of the modern state and a religious society, ... between the anxieties of minority religious groups and the majoritarian inclinations of many Hindu congressmen”. But the same author ends up to admit that “the fact that the cloth has not been rent testifies to the lasting utility of the deliberately ambiguous concept of ‘unity in diversity’”³⁴. In my opinion reconciling the contradictions of a multicultural society and demonstrating the possibility to combine a secular state with a religious society, far from being contradictory, represents a very important and original contribution to the diffusion of democracy in a multicultural world.

Another important aspect of the charter of fundamental rights, having a broader meaning than secularisms, is contained in the section dedicated to the “cultural rights”, declared in articles 29-30, in a very wide formula. According to article 29 “any section of the citizens residing in the

³² *Bonmai vs. Union of India*, A.I.R., S.C. 1918, 1994.

³³ Rajeev Dhava, Fali S, Nariman, *The Supreme Court and group life: religious freedom, minority groups and disadvantaged communities*, in B.N. Kirpal, Ashok H. Desai, Gopal Subramaniam, Rajeev Dhavan, Raju Ramachandran (eds.), *Supreme but not infallible. Essays in honor of the Supreme Court of India*, Oxford: Oxford University Press, 2000, 275.

³⁴ James Chiriyankandath, cit., 11.

territory of India or any part of thereof having a distinct language, script or culture of its own shall have the right to conserve the same". Here we found group rights (granted to "any section of the citizens") applied to in a very extended context ("language, script and culture"). This is a very general assumption protecting not only the officially recognized languages (i.e. the presently 23 languages, included in the Eight Schedule as Union or States official languages) but potentially any of the hundreds of local languages or dialects spoken (and sometimes also differently written) all over the sub-continent. The addition of the notion of "distinct culture" to language and script, is also very relevant and innovative, enlarging the scope and the application of this article to religious minorities (thus reinforcing their protected status) but also to any other social group able to claim "its own distinct culture". Clause (2) of the same article and article 30 specify the extent of this protection with regard to education both for the individual ("no citizen shall be denied admission into any educational institution ... on grounds only of religion, race, caste, language or any of them") and for groups ("all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice").³⁵

In sixty years the Supreme Court has been called several times to interpret and fix some limits to such an ample recognition of minority "group" rights, in order to reduce the risk of a "minorityism" often indicated by the legal doctrine³⁶ and by the majoritarian groups in Indian society (namely the Hindu middle and upper class). Generally speaking the Court has rejected the idea of self-definition of minorities, leaving this task to the State (in 2002, in the *Pai Foundation* case it clearly indicated that the State is the subject to determine the status of minority) on the basis of a case by case approach. In fact, a group or community may represent the minority in a member State while being the majority in another one or in the whole country (take the case of Hindus, majoritarians in many States but constituting a minority in Punjab, Kashmir and often in the North-East). As rightly noted by M.P. Jain the Supreme Court has decided not to fix strict criteria but has determined that "minority is to be determined in relation to the particular legislation which is being challenged" so that "if a State law extending to the whole of the state is in question the minority must be determined with reference to the entire State population".³⁷ What is important to stress here is that the Indian Constitution does not limit minority rights to the recognition and protection of their culture but considers, in article 30, the right to establish and administer educational institutions of their choice as a corollary of their cultural freedom. Finally, articles 350 A and B reinforce this right, but with an ambit limited to linguistic minorities, disposing that "it shall be the endeavor of ealism, instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups ...", and creating a Special officer for linguistic minorities "to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution".

³⁵ Clause (2) of article 30 specifies that: "The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority, whether based on religion or language".

³⁶ Brij Kishore Sharma, *Introduction to the Constitution of India*, New Delhi: Prentice-Hall of India, 2005, 100.

³⁷ M. P. Jain, *Indian constitutional law*, New Delhi: Wadhwa, 1994, 650.

From the examples given above (not exhaustive of all minority rights contained in Indian Constitution) the most striking difference emerging with respect to the renowned models of western constitutional multiculturalism is that in India minorities are not considered as “external” elements having to melt with the dominant society (like in the American approach) or simply needing to be protected against it (like the Canadian “mosaic” approach), but as actors of the construction of a common (plural) identity and, thus, as basic elements of the constitutional system.

4.3. Asymmetrical federalism: structural arrangements to deal with diversity.

Asymmetrical federalism is considered today a basic feature for a multicultural federation, because it offers a flexible framework for accommodating the different needs of communities in terms of institutional recognition of political autonomy or self-government. In its study on comparative federalism Michael Burgess recognizes that the term ‘asymmetry’ no longer possesses negative connotations and that, on the contrary it is regarded very much in a positive vein, bordering on virtue”.³⁸ In the classical functional approach to federalism, based on the American model, asymmetries had to be melted in the pot of legal individual equality, while today they are considered as a important elements of the constitutional framework of multicultural states (both in federal contexts like India, Canada or Ethiopia or in regional states like Spain, and, more recently, Italy).

According to the diverse and asymmetric structure of Indian society the 1950 Constitution has introduced several elements of asymmetrical federalism. The first of them is the basic structural asymmetry implied by the presence of two categories of territorial Units, the (28) States and the (7) Union Territories, having different degrees of autonomy and power. Moreover each category is characterized by some asymmetries. The administration of the Union Territories varies in function of their geography, population and political relevance. The Capital Territory of Delhi, for instance, have its own Legislative Assembly and Council of ministers, while others are directly governed by a special Administrator appointed by the President of the Union, according to article 239 of the Constitution. The category of the States is more homogeneous but displays also some asymmetries.

The most notable case of asymmetry between States is the special status granted to the State of Jammu and Kashmir by article 370 of the Constitution, leading to the elaboration of a special State Constitution adopted in 1957 and to special legislative powers to the legislative Assembly. More interestingly article 371, emended several times (and extended to articles 371 A, B, C, D, E, F, G), disposes asymmetric provision for several States, notably Maharashtra, Gujarat, Assam, Manipur, Andhra Pradesh, Sikkim and Mizoram. Another category of asymmetric provisions concerns the States, where there is a relevant presence of tribal communities. Such provisions are contained in Part X of the Constitution entitled “The Scheduled and Tribal Areas”, that was amended several times to deal with specific requests for autonomy or statehood, coming mainly from the North-

³⁸ Michael Burgess, *Comparative federalism. Theory and practice*, London: Routledge, 2006, p. 225.

eastern regions, and eventually resulting in the creation of several States in the area (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Mizoram, Sikkim and Tripura).³⁹ To solve the problems linked to internal heterogeneity (different tribes living in the same State or competing for control over the same territory) the Union decided the creation of Regional district Councils within the States. One interesting example is the constitution, in 1993, of the Bodoland Autonomous council, within the State of Assam, an elective body having legislative and executive organs. The matters allocated to the Council were quite extensive (38 entries), including subjects regarding the educational, social, economic, ethnic and cultural affairs of the community.⁴⁰ As interestingly noted “on matters relating to religion of the community, customary law, and ownership and transfer of land within Bodoland, Bodo views was supposed to prevail”.⁴¹ In this system “a series of negotiated jurisdictions and their changing boundaries authorized by a federalizing process were to link the Obviously the problem of recognition of the cultural relevance of tribal communities in India cannot be solved by the mere constitution of new States, being more complex in its nature and its territorial articulation. According to G. Mahajan Indian federalism followed a binary policy: on the one hand it recognized the diversity of tribal communities, by granting them “special rights to govern themselves in accordance with their customary law and distinct social and religious practices”, on the other they were awarded separate representation in political elections at all levels (including the central Parliament) to integrate themselves in the broader political arena, the state, the autonomous councils and the scheduled areas in one connected series of coordinated efforts”.⁴² The outcome of this “multilevel” federalism is quite notable since, over the years, it “has enabled many vulnerable communities to survive and protect themselves from pressures that come with the large scale influx of outsiders”.⁴³

4.4. The dynamic aspect of Indian federalism: the policy of linguistic states and the reform of local government.

Coming to the third feature mentioned above, the dynamic aspect of Indian federalism, we must consider the successful policy of inclusion of cultural identities through the attempt of reducing conflicts between regional/ethnic groups and the state. This policy has not undermined the consolidation of an Indian identity; on the contrary it has consolidated it, as showed by the documented studies on the state-nation model quoted above. The Indian situation is still particularly intricate, because regional identities are intermingled with the religious factor and with social inequalities (backwardness and caste). This scenario was often considered

³⁹ Gurpreet Mahajan, cit., 303; the author also explains that “while the concern for including them into the polity took the form of special representation, ensuring the survival of their distinct cultural identity led to the granting of a special status to those regions where there was a significant concentration of the Scheduled Tribes”.

⁴⁰ For an account on this experience: Jyotirindra Dasgupta, *Community, authenticity and autonomy: insurgency and institutional development in India's North-East*, in Amrita Basu, Atul Kohli (eds.), *Community conflicts and the State in India*, Oxford: Oxford University Press, 1998, 202

⁴¹ Sudhir Jacob George, *The Bodo Movement in Assam*, in *Asian Survey*, 34, 1994, p. 889.

⁴² Jyotirindra Dasgupta, cit., 206.

⁴³ Gurpreet Mahajan, cit., 303.

unpropitious both to democracy and to the setting up a viable federal state. According to Bhattacharyya⁴⁴, since the first post independence years “the resurgence of regionalism in many parts of India baffled the observers of Indian politics and offered as the basis of prediction of the country’s imminent balkanization (Harrison)”. Today the debate is still open between the advocates of Indian federalism, considering it an example of successful political accommodation of identity (Bhattacharyya) or a model for ‘containing ethnic conflict through internal reorganization’ (Chadda)⁴⁵, and those who, on the basis of the Kashmir divide and other border problems, consider that ‘India as Nation-State remains a deeply contested fact’(G. Singh).⁴⁶

In my opinion, if we take a broad view at the contemporary Indian history, the most important challenge for the Indian Union, after the partition from Pakistan, was the integration of the Dravidian region (the southern states and provinces, covering one fifth of the Union territory), having a common culture, similar languages and a shared historical tradition. This problem emerged in the first of three successive phases, in which the creation of new States was discussed and realized (1952-56; 1971-87; 1999-2000), probably the most critical.

With regards to the number of States or the criteria to legitimate their creation, the Constituent Assembly did not take any operational decision but established a clear procedure: the final word about the establishment of new States was to remain in the hands of the central Parliament, according to articles 2 to 4 of the Constitution. This pragmatic choice led to the creation of the State Reorganization Commission (SRC), concluding its works in 1955 with the publication of a Report proposing the division of India in 14 States, on the basis of ‘ethno-linguistic communities’. The leading idea of the reform, approved by the Parliament with the State Reorganization act of 1956, was to balance the recognition of cultural identities with a good governance of the States and the safeguard of the unity of the Nation. For these reasons the newly designed States were not mono-linguistic (although they all contained a linguistic majority) and were assigned territories of large dimensions. According to Chadda “the first reorganization created a unique design for governance” able to handle Indian heterogeneity. The main aspect of this design was the setting up of a system of ‘interlocking balances’ between the diverse nationalities based on three features: the reinforcement of the role of Central State as an “impartial pan-indian agency” (guaranteed by strong constitutional powers), the creation of a “layered order” (through decentralization within the member States), the reinforcement of regional autonomy at the member State level, where “the central government was forced to yield linguistic States that would thereafter organize politics on the basis of their distinctive cultural and political identity”.⁴⁷ The creation of a relevant political and institutional space at the member state level is probably the most important result of this first reform because it paved the way the transformation of the

⁴⁴ Haribar Bhattacharyya, *Federalism and regionalism in India. Institutional strategies and political accommodation of identity. Working Paper n. 27*, South Asia Institute, University of Heidelberg, 2005, 2.

⁴⁵ Maya Chadda, *Integration through internal reorganization: containing ethnic conflict in India, The global review of Ethnopolitics*, 2 (1), 2002, 44-61.

⁴⁶ Gurharpal Singh, *Critical reflections on celebrating success: a response to Maya Chadda, The global review of Ethnopolitics*, 2 (2), 2003, 52.

⁴⁷ Maya Chadda, cit., pp. 49 -50.

Indian political system through the emergence of the “regional parties” as political units capable to influence federal politics. The second and third waves of reorganization, resulting in the present 28 States and 7 Union Territories, confirmed substantially this trend, although they took place in different political periods and contexts.

Another important element of contemporary Indian federalism is the constitutional reform of local government of the Nineties that opened up a new “political space” for minority groups, from the Dalits, to the Adivasis, to tribal communities.⁴⁸ This reform (approved in 1993), by revitalizing the old Panchayat (the traditional five-member council of elders) and the Gram Sabha (the village Assembly), has extended the scope of Indian democracy, through a political language more attuned to local traditions and capable to stimulate grassroots democracy, in contrast with the élite democracy approach typical of the first phase of state building in India.⁴⁹ The constitutional amendments have restored the village Assembly, an ‘arena’ where all residents can participate and express their views, giving it a formal recognition as an instrument of direct democracy with highly symbolic but also effective functions.

Today all over India the rural local government comprises a three tier arrangement, one at the District level (Zilla Parishad), one at the intermediary level (Mandal Panchayats), and another at the village level (Gram Panchayat). Generally speaking the rural local governments should perform a double role, being at the same time actors of the decentralized governance (by performing administrative powers) and promoters of the ‘human development’. This reform has generated many expectations, representing, according to some commentaries “a new phase for Indian democracy” .⁵⁰ The institutional and legal strategy behind the reform can be traced back in the words of Rajni Kothari, underlying that in order to make political institutions responsible and accountable it is necessary “to provide lay citizens involvement in new varieties of old institutions like Gram Sabha which can combine older forms of informal consensus making mechanics with the more formal, institutionalized and legal forms directed by legislation”.⁵¹ The potential of Gram Sabha and similar participation instruments for facing the problems of diversity lays in the possibilities to spread informal mechanisms of dispute settlement and of discussion of political issues using variable traditional methods adapting to local condition and history. Thus, Indian local government appears to be a very interesting experience of legal pluralism “in action” at grassroots level.

⁴⁸ Peter Ronald deSouza, Decentralisation and local government: the ‘second wind’ of democracy in India, in Zoya Hasan, E. Sridharan, R. Sudarshan (eds.), *India’s living Constitution. Ideas , practices, controversies*, London: Anthem Press, 2005, 370.

⁴⁹ After several unfruitful attempts, in 1991 was proposed a comprehensive constitutional reform on local government approved by both the Houses of Parliament in December 1992, by adopting the Seventy Third and Seventy Fourth amendments to the Constitution. These amendments dispose, in the rural context, the constitution of a three-tier *Panchayati Raj* system - rural local self- government - in all the member States. The members of *Panchayat* must be directly elected, with some reserved seats for Scheduled castes, Scheduled tribes and women.

⁵⁰ Peter Ronald de Souza, *The struggle for local government: Indian democracy’s new phase*, *Publius*, 33 (4), 2003, 99-118.

⁵¹ Rajni Kothari, *State against democracy: in search of human governance*, New Delhi: Ajanta Publications, 1988, 78

5. Comparative conclusions: towards a “multicultural state”.

During the six decades following the birth of the Constitution Indian federalism has raised in the consideration of the global constitutional and political science doctrine passing from a highly objectionable system (a “unitary state with subsidiary federal principles” or at most a “patchwork”) to a successful prototype, and eventually to a model of multicultural state (in the “state-nation” theory). Even if a complete acknowledgment of the Indian system will require more studies, especially by comparative constitutional scholars, it is undeniable that, at least for the Asian continent, it represents a fundamental point of reference. After independence and the consolidation of a stable democracy India has naturally represented a leading example of successful state-building for post post-colonial countries, but such a perspective is too limited and needs to be broadened by new studies, like, for example, the extensive comparative survey of Jash Ghai on “Autonomy and Ethnicity”, based on a worldwide comparison.⁵² Important materials (even if restricted to a regional context) were also offered by a bilateral comparison of federalism in Australia and India, edited by Ian Copland and John Rickard.⁵³ More recently, Baogang He in a collective book on “Federalism in Asia”, considers India “a well developed federalist state”, whose success story is based on an appropriate mix of multinational and regional federalism⁵⁴, realizing a combination of “ethnic and civic interest”. For this author “the achievement of the Indian accommodation of diversity of ethnic group is due to both the multinational and regional federal mechanisms”, paving the way for an “hybrid federalism” that he suggest as “the most appropriate solution for solving the problems of diversity and multiculturalism in Asia through a piecemeal process, without introducing wholesale western federalization”.⁵⁵

An interesting attempt to highlight the theoretical and practical importance of India for the global debate on federalism was undertaken by the 4th International Conference on Federalism, organized in New Delhi in 2007 by the Forum of Federations, significantly entitled “Unity in Diversity: Learning from Each Other”. Presenting this worldwide event, the President of the Forum, George Anderson, underlined the need for “a serious focus to India's experience and the lessons it can offer”, motivating this assertion with different elements, going from “its dramatic reform of local government (that) brought 3 million citizens into elected office with a tremendous impact on local decision-making and the empowerment of women”, to the relevance of India's experience “to various fragile democracies in developing countries coping with deeply diverse and

⁵² Yash Ghai (ed.), *Autonomy and Ethnicity. Negotiating Competing Claims in Multi-Ethnic States*, cit.

⁵³ Ian Copland, John Rickard (eds.), *Federalism: Comparative perspectives from India and Australia*, New Delhi: Manhoar Publishers, 2001.

⁵⁴ Baogang He, Democratization and Federalization in Asia, in Baogang He, Brian Galligan, Takashi Inoguchi (eds.), *Federalism in Asia*, Cheltenham: Edward Elgar, 2007, p. 1 ss. For this author regional or territorial federalism as opposed to multinational federalism “can be characterized as the universal protection of individual rights, the neutrality of the state with regard to different ethnic groups, the division and diffusion of power within a single national community, and regions rather than ethnicity being the basic unit of federal policy” (Idem, p, 11).

⁵⁵ Idem, p. 13

often conflictual societies”.⁵⁶ In a broader context he also underlined that India “ with the world's third-largest Muslim population and other minorities, is relevant for long-established democracies that are coming to terms with multiculturalism and significant religious minorities” and that “its scale and complexity exceeds in many ways that of Europe, whose project of creating a united community in an environment of huge diversity and historic tensions provides interesting parallels and contrasts”. The first of the books originating from this Conference, titled “Building on and accommodating diversities”, assumed that “a polity that builds on and accommodates diversities provides for more justice and better guarantees of human dignity because it respects the reality of the diversity of human nature”.⁵⁷ In this perspective India was indicated as “a classical example that unity and diversity can be reconciled, provided that the system proves to be flexible and adaptable enough to new challenges to unity and diversity”.⁵⁸ The difference between the American model of federalism and the Indian way to reconcile unity and diversity was also stressed by assuming that “while in the United States federation, individualism and equality of opportunity back an absolute nature of civil and political rights, in India, the logic of constitutional design draws heavily on negotiating the values of citizenship which affirms positive group difference and differential rights of minorities through personal application of laws in a pluralist and historically unequal society”.⁵⁹

Echoes of this re-evaluation of the Indian model can also be traced in recent theoretical attempts to describe the growing relevance of federalism in the twenty-first century, like the book on “Comparative federalism. Theory and practice” by Michael Burgess, insisting very much on the moral and practical value of federalism as an institutional technique to face the challenges of globalization. In this perspective he underlines the relevance of “flexible federalism”, based on the systematic use of asymmetry to accommodate ethnic and cultural conflicts, considering that “India, as a case study of multinational and multicultural federation, has demonstrated a remarkable flexibility in constitutional design and amendment, legal interpretation and political versatility in accommodating its profoundly complex and subtle social diversity typically expressed as overlapping ethnic, regional, tribal communal and religious as well as sub-state national identities”.⁶⁰

In the context of a growing concern for the study of Indian federalism the most recent and interesting attempt is the “state-nation” theory proposed by Stepan, Linz and Yadav, that I have illustrated above. These authors have selected the Indian institutional experience as a proto-type to build a new ideal-type of state, designed to face “one of the most urgent conceptual, normative, and political tasks of our day”, notably “how polities that aspire to be democracies can

⁵⁶ George Anderson, *What India Can Show the World, Federations Magazine*, Vol. 7, No. 1 (October /November 2007) at 32; available at <http://www.forumfed.org/en/products/federations.php>.

⁵⁷ Akhtar Majeed, jonah Isawa Elaigwu, Thomas Fleiner, Mahendra P. Singh, *Theme Paper. Building on and Accommodating Diversities*, in Ronald Watts, Rupak Chattopary (eds.), *Building on and Accommodating Diversities*, New Delhi: Viva Books 2008, p. 7.

⁵⁸ Lidija R. Basta Fleiner, *Nation Building and Diversity*, in Ronald Watts, Rupak Chattopary (eds.), *Building on and Accommodating Diversities*, cit., p. 82.

⁵⁹ Idem p. 81.

⁶⁰ Michael Burgess, cit., p. 124.

accommodate great sociocultural, even multicultural diversity within one state”.⁶¹This theory presents different stimulating aspects for constitutional comparative law.

First of all it emphasizes the need for detailed studies of Indian federalism in a comparative constitutional perspective, bearing in mind the lack of specific contributions in this area, even if some isolated attempts have been realized.⁶²

Secondly it underlines three specific constitutional dimensions of analysis, that I have defined above as the three constitutional pre-conditions for a state-nation: the asymmetrical federalism (or regionalism), the concurrent recognition of individual and collective rights, and the preference for a parliamentary system of government in a federal state. Each of these three dimensions is challenging the mainstream constitutional doctrines of the nation-state. Asymmetry is considered as an exception in the light of the liberal principle of formal equality, both in the allocations of rights to the individuals and of functions and powers to the constituent units of federal or regional states. Individual and group rights are often seen as conflicting and irreconcilable by liberal constitutionalism and their coexistence poses, at best, problems in terms of mutual limitation, as the debate on the new directions of rights in multicultural societies shows.⁶³ Finally, in the traditional template of federalism (based on the American model) the most appropriate form of government is considered the presidential system, while parliamentary government is often criticized as dysfunctional.

Thirdly, this theory, by comparing and classifying in the same group states like Spain, India and Belgium, entities considered predominantly as not comparable, enlarges the scope of the ideal-type of the state-nation from formally federal states to all multicultural societies and polities.

From a constitutional point of view the state-nation model lays down a useful platform for a theoretical revision of liberal constitutionalism. In the perspective of the crisis of nation-state, exposed both to international pressures and to internal autonomist or secessionist requests, it represents an alternative to the narratives of the multilevel constitutionalism, dominating today the doctrinal scene.⁶⁴ Such an alternative, based on the recognition of the persistence of the state as the most viable form of institutional aggregation (in spite of all the death certificates that it has received in the last decades), can be identified in the “multicultural state”. Broader than the pure multinational state, the multicultural state is able to embrace different territorial articulations of power (from the federal or regional state, to a unitary but highly decentralized state) and to

⁶¹ Alfred Stepan, Juan J. Linz and Yogendra Yadav, *Crafting State-Nations: India and other Multinational Democracies*, cit., p.1.

⁶² See for example the rich comparative study on India and Germany by K.L. Bathia, *Federalism and Frictions in Centre-States Relations. A Comparative Review of Indian and German Constitutions*, New Delhi: Deep and Deep Publications, 2001.

⁶³ From different perspectives see Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Oxford University Press, 1996, Neera Chandokhe, *Individual and Group Rights: a View from India*, in Zoya Hasan, E. Sridharan, R. Sudarshan (eds.), *India's living Constitution. Ideas, practices, controversies*, cit. pp. 207-241, Upendra Baxi, *The future of Human Rights*, Oxford: Oxford University Press, 2006.

⁶⁴ For this approach see, for example, the recent Cambridge review on Global Constitutionalism, and particularly its first Editorial by Antje Wiener, Anthony F. Lang jr., James Tully, Miguel Poiarés Maduro and Mattias Kumm, *Global constitutionalism: Human rights, democracy and the rule of law*, in *Global Constitutionalism*, vol 1, issue 1, March 2012, pp.1-16.

conciliate the protection of both individual and group rights, on the premises of an institutional affirmation of diversity as the foundation of the constitutional system. Naturally, the construction of a mature notion of multicultural state requires the use of a new methodological equipment based on pragmatism, flexibility and constitutional hybridization. These conceptual instruments are all contained in the tool-box of Indian constitutionalism,⁶⁵ whose successful democratic journey shows that 'investing on diversity' is a realistic answer to the intercultural conflicts that are afflicting our globalized (but not homogeneous) contemporary societies.

While India and the EU embody two different approaches to the challenge of governing democratically a continental and heterogeneous polity, both systems are also not static. It is interesting to note their dynamics. Coming from different directions, they seem to move towards each other: Whilst India was doubtlessly created as a democracy, it is only slowly becoming a more pointedly federal polity. In contrast, the EU was created as a federation but is only slowly evolving into a democracy. This observation does not necessarily imply convergence. Differences are abundant - and often more interesting. Yet, as Ramachandra Guha has written, both polities do face similar challenges and it will be interesting to observe how they will meet and overcome them in the future. One thing seems clear: there is plenty to be done for researchers on transcontinental Indo-European comparative constitutional law.

⁶⁵ For a survey on the methodological perspectives arising from the study of Indian constitutionalism cfr. D. Amirante, *Nation-Building Through Constitutionalism: Lessons from the Indian Experience*, in Hong-Kong Law Journal, vol. 42, 2012, p. 23 ss.