Swabhimaan

A LIBERTARIAN PERSPECTIVE ON INDIA

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THE DELIMITATION FREEZE HAS OUTLIVED THE EMERGENCY. ITS EXPIRY MAY NOW ARRIVE WITHOUT A VOTE.

Swabhimaan

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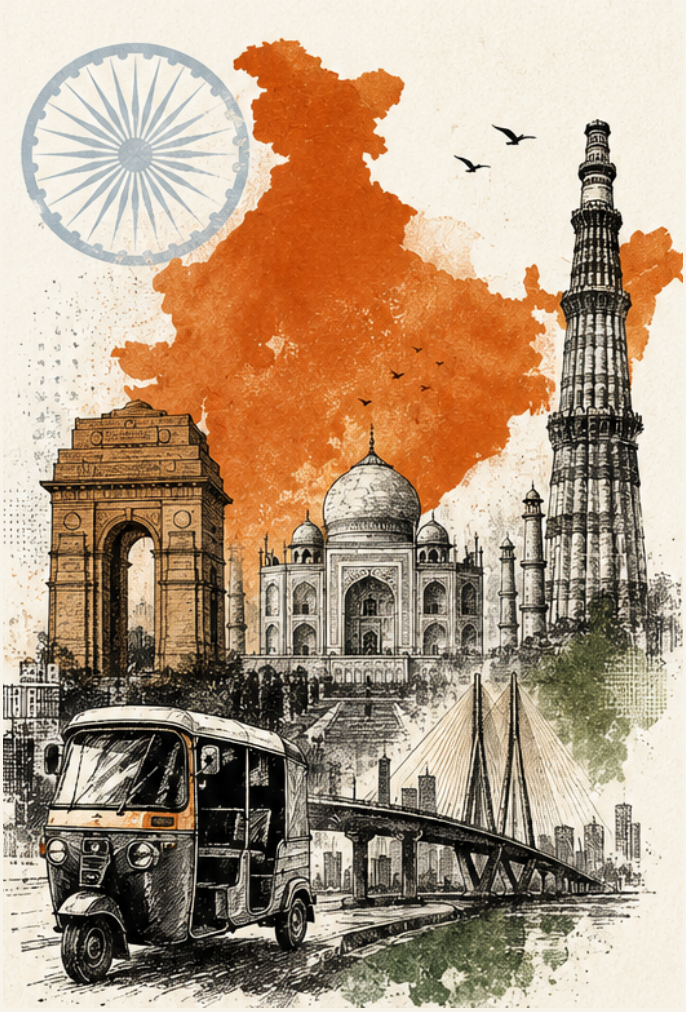

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It is Swaraj when we learn to rule ourselves. It is, therefore, in the palm of our hands. But such Swaraj has to be experienced, by each one for himself. One drowning man will never save another.

— M. K. GANDHI, HIND SWARAJ, 1909

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Editor: Avneesh Kasture. Swabhimaan is published every Thursday.

The Ghosts of Emergency Past — II: The Clause That Stopped Time

BY AVNEESH KASTURE

The delimitation freeze was written by the Emergency Lok Sabha that passed the FCRA, as a clause of the same policy that permitted compulsory sterilization. Its expiry needs no Emergency and no vote; a publication date will do. And the war over that date is about the money that flows through Delhi more than the seats.

The bill that became the Forty-second Amendment passed the Lok Sabha at 6.02 in the evening on 2 November 1976, by 366 votes to four, seven months after the FCR Bill's single afternoon described in Part 1. Twenty-one opposition MPs sat in preventive detention, the CPI voted aye, most of the rest boycotted, and four members voted no.

The amendment is remembered as the "Mini-Constitution", for the Preamble it rewrote and the courts it caged. Sections 15 and 16 did something quieter. Every constitutional reference to "the last preceding census" would, until the first census taken after the year 2000, "be construed as a reference to the 1971 census". Parliament directed the Constitution to treat 1971 as the permanent present.

The freeze arrived as population policy. Defending the year's sterilisation spending the following afternoon, a Congress member explained: "we have even frozen the delimitation of constituencies till 2002 so as to make family planning a national objective." April's National Population Policy had set the two side by side, compulsory sterilization if a state wished and no lost seats for restraint; in the amendment's year sterilizations roughly doubled, and the northern states competing for Sanjay Gandhi's favour became the vasectomy belt.

This is the delimitation freeze's birth certificate. Whoever defends the freeze defends a clause drafted as cover for the most coercive population campaign in the country's history; whoever attacks it attacks the South's only reward for half a century of restraint. Neither side's hands are clean. As with the FCRA, this should not be a partisan issue.

THE TEMPORARY THAT BECAME PERMANENT

The lesson of Part 1 was that powers built for one government survive it. The power here is the clock: deciding when, and whether, the count of the people becomes the map of their representation. In 1976 the Emergency chamber seized it. In 2001 the power passed to a man the Emergency had jailed. Vajpayee's government extended the freeze anyway; the 84th Amendment changed, in essence, one word: "2026" for "2000". No Emergency was required. Any two-thirds majority to end the freeze must include the states it advantages, so the coalition can never be assembled: "an entrenched unamendable rule", as one constitutional scholar calls it.

The freeze has inverted its justification: built to protect states from punishment, it now administers it. On the Carnegie Endowment's figures, eight per cent of Lok Sabha seats sit in the wrong states, and a Bihar MP answers to twice a Kerala MP's population. A rule frozen to reward restraint now watches southern governments legislate for the opposite. Since August 2024, Andhra Pradesh and Telangana have repealed their two-child bars for local elections, Chandrababu Naidu, who wrote the original bar and says so, proposes one pointing the other way, and M.K. Stalin has urged Tamil newlyweds to have more children, for the seats.

The symmetry with 1976 is exact: the Emergency's knife suppressed births in the North, the statutes of 2024-26 solicit them in the South, and both rest on one conceit, that the state can compose the census it will be measured by. Sterilization collapsed when the Emergency lifted, "family planning" became "family welfare", and the districts where coercion was heaviest show fertility rising from 1980 onward. The North grew fastest where the state cut deepest; the South fell below replacement with no coercion at all. The second attempt is eighteen months old and cannot succeed. Seats follow shares of the count, and no statute of 2024 moves the South's share in thirty months; Japan and China, Naidu's own warnings, are the ledger of lavish pro-natalism failing. What survived the first failure, and will preside over the second, is the machinery: the freeze, on its clock.

DELIMITATION BY NOTIFICATION

The government's April answer was a package: a ceiling raised from 550 to 850, a new Delimitation Act, and the women's reservation of 2023 finally in operation. The seat arithmetic was fought over loudly; the machinery went unexamined. It enlarges executive control over the map in three ways.

First, it cuts the link between census and map. The rule today is simple: count first, then redraw, on the count just taken. Even 1976 and 2001 left that rule alone. The Amendment Bill hands both choices to a simple majority acting by ordinary law: when to redraw, and which census to use.

Second, the Delimitation Bill leaves the schedule to the executive. The Central Government "may, from time to time, by notification, constitute a Commission", under no trigger and no deadline, and the applicable census is whatever was last published on the day the Commission is constituted: the executive picks the data by picking the day it acts.

Third, the map is closed to review. The Commission's orders "shall not be called in question in any court".

Section 16 of the 42nd Amendment itself provided that readjustment "shall take effect from such date as the President may, by order, specify"; the executive clock was wound in 1976, and every successor has kept it running. The 2002 delimitation left out four northeastern states by executive deferment orders; the deferment was rescinded in 2020, and Assam was redrawn in 2023, by the Election Commission under a different statute, on the 2001 census; the Supreme Court declined to stay it. Deferral by notification, revival by notification, route-shopping, antique data: all have a field test and a survival record.

THE VOTES THAT SETTLED NOTHING

On 17 April the amendment fell: 298 in favour, 230 against, fifty-four short of two-thirds, the first constitutional amendment to fail in twelve years. The chamber of 1976 passed its amendment with the opposition in jail; the chamber of 2026, with its opposition free, defeated one.

The guarantee that no state would lose its share of seats appears nowhere in the Bill. The Prime Minister gave it at a Kerala rally; the Home Minister gave it as a quip, offering to return within the hour with an amendment. He never returned. The assurance lived in the speech; the discretion lives in the statute.

This monsoon the government returned with 324 assured votes, still short, and held the legislation back rather than lose twice, in a session that debated only one of its twelve bills. The Emergency chamber legislated without an opposition. This one legislates without a conversation.

THE PUBLICATION-DAY TIME BOMB

Neither vote settled the decisive thing.

The freeze holds only until "the relevant figures for the first census taken after the year 2026 have been published"; the census is under way, reference date 1 March 2027. On publication, the Constitution's default reasserts itself: delimitation on the new census, by ordinary law, on a simple majority. The courts have declined both to compel delimitation before publication and to accelerate the women's reservation that waits upon it.

That is the timebomb, aimed at the South, and April's defeat armed it. The defeated Bill grew the House so every state gained; the default is zero-sum inside the existing ceiling, so Tamil Nadu falls from 39 to 32, Kerala from 20 to 15, and Uttar Pradesh rises to 89. The South cheered a defeat that left it worse off. The government's shortcut needed a supermajority and failed; the South's protection, a fresh amendment extending the freeze, needs the same supermajority; the default needs only a publication date, controlled by the Registrar General under a Home Ministry that postponed the last census six years.

In 1976, stopping the clock took theatre: an amendment, an opposition in jail. The theatre left behind the ghost this series is named for, a clause that outlived the Emergency and every government since and decided who represents whom for fifty years after its crisis had ended. The haunting now needs nothing from anyone. The reckoning it deferred for half a century will arrive exactly as it was postponed, without the consent of the governed.

THE ROADS OTHERS TOOK

The United States froze after the 1920 census, when the House refused to reapportion for a decade; the 1929 cure removed Congress's discretion, and every census since has translated into seats automatically. Washington also pays no state a share of any pool: federal money arrives as per-person program money, with Medicaid's match rising as a state's income falls, so a bigger count buys proportional dollars and never a slice of a rival's. Britain, after blocking three boundary reviews, removed Parliament from the final step in 2020; the next review succeeded. Canada wrote the bargain down: by statute no province falls below its seat floor while the House grows around it, which is Shah's promise, in force forty years. The bad roads are mapped too. Australia pooled its money centrally and has spent ninety years buying off its donor state, most recently with a guaranteed 70-cent floor one of its own economists calls the century's worst policy. Nigeria ties both seats and oil revenue to headcount and has not completed an accepted census since 2006: where the count decides the money, every region fights the count. The 2026 package chose discretion where others built automation, an oral promise where others wrote floors, and left untouched the fiscal stakes that Nigeria proves fatal.

WHY THE CLOCK IS WORTH A WAR

The remaining question is why a headcount inspires such fear; the answer is fiscal. On the standard proxy, since India publishes no contribution figures, industrialised states recover roughly 35 to 55 paise per rupee contributed, Uttar Pradesh receives about two rupees, Bihar approaches three, and Karnataka's Chief Minister claims thirteen paise. For decades an unwritten bargain compensated: the South financed the North and stayed overrepresented. Headcount delimitation tears up one side and keeps the other: taxation with shrinking representation.

The grievance is real. The remedy the South has reached for attacks the seat map instead of the money. Telangana proposes weighting fiscal contribution in delimitation itself; name that for what it is, a contribution-weighted franchise. No democracy gives an industrialist more votes than his driver; a state boundary does not launder the idea. A person in Patna is worth exactly a person in Palakkad. On this narrow point the government's slogan is correct: one person, one vote, one value.

The point is not that the South should submit. It is that every remedy on offer answers the same premise: Delhi collects the money, and a Lok Sabha majority directs it.

The seat map is worth a demographic war only in proportion to what the seats control.

One remedy has gone unproposed: shrink the pool. Canada's provinces raise close to half of all government revenue, at rates they set themselves; India's states collect about a third, at rates a Union-chaired council largely fixes, with no income tax of their own, and depend on Delhi's devolution for much of what they spend. Rebalance that. Raise the states' share of the divisible pot, and cap the cesses and surcharges that Article 270 keeps outside it, grown from a tenth of gross tax revenue to a quarter in a decade, which shrinks headline devolution of 41 per cent to an effective 30. A Lok Sabha that controlled less could be apportioned honestly: a census would be a count, not a raid, and a state could watch its headcount decline the way it watches its rainfall.

1976, AGAIN

The 1976 chamber gave India two machines in one year: the FCRA, a grip on civil society, and the 42nd Amendment, a clock over the electoral map. Both were built in the same jailed silence, outlived their builders, and were inherited, gratefully, by governments sworn against their origins.

The freeze will now end because the calendar requires nobody's consent. India can fight over the map, with no answer both democratic and federal at these stakes, or shrink the stakes and return the money; the fear will leave with it.

The lesson of Part 1 was that the machinery remains when the government changes. The lesson of Part 2 is its corollary. The only machinery that cannot be abused is the machinery that was made smaller.

India's Constitutional Betrayal of Property Rights

BY RANGARAJ

In *Buddha or Karl Marx*, B. R. Ambedkar asks:

> ***"Why cannot a property owner be killed if his ownership leads to misery for the rest of humanity? … why should one regard private property as sacrosanct?"***

That is an extraordinary question. But history gives us an even more extraordinary answer.

Humanity's struggle over property is ancient. Genetic research has identified a severe Neolithic Y-chromosome bottleneck, suggesting that the effective male-to-female ratio collapsed dramatically, to a low of one male to 17 females. It is a reminder that institutions of property, inheritance and social order emerged through a long and often violent struggle over scarce resources.

Thousands of years later, the Soviet Union attempted to abolish private ownership on an unprecedented scale.

The Kulaks — so-called "rich peasants" — were targeted as enemies of equality, even though many were only somewhat better off than poorer peasants.

Lenin reportedly told Bertrand Russell, describing the process with chilling amusement:

> ***"There are poor peasants and rich peasants, and we stirred up the poor peasants against the rich peasants, and they soon hanged them to the nearest tree."***

HA HA HA!
The joke, however, was ultimately on the planners.

LUDWIG VON MISES CALCULATION PROBLEM

Once private ownership of productive resources is abolished or severely crippled, genuine market prices disappear or become distorted.

But what does that mean?

It does **not** mean that a socialist planner cannot calculate numbers. Of course he can. He can count tonnes of steel, measure labour and calculate how many machines a factory can produce.

The problem is not arithmetic.

The problem is determining **which use of scarce resources is economically more valuable**.

Suppose the government has enough steel for only one major project. Should it build a railway bridge, manufacture tractors, construct a factory or do something else?

Which use is more valuable?

A private entrepreneur can compare market prices, costs, expected revenues and alternative investments. If he makes a bad decision, he suffers a loss; if he makes a good one, he earns a profit.

The planner may know exactly how much steel exists. But should 100 tonnes be used for a machine, a bridge or tractors?

Every choice means sacrificing alternatives.

How can those alternatives be compared?

In a functioning market, privately owned resources are bought and sold. Competing buyers and sellers generate prices. These prices allow entrepreneurs to compare alternative uses of scarce resources.

This becomes especially important with **capital goods** — factories, machines, land, power plants, transport equipment and tools used to produce other goods.

Suppose ₹100 crore is available for investment. Should it go into a steel plant, power plant, railway or hospital?

A planner may possess enormous information about physical quantities. But without genuine market prices for productive resources, he lacks the same mechanism entrepreneurs use to compare alternatives and estimate opportunity costs.

That is Mises's **economic calculation problem**.

It is not a problem of arithmetic or simply a shortage of information. It is a problem created when the institutional process that generates relevant economic information — **private ownership, exchange and market pricing** — is abolished or crippled.

The chain is simple:

PRIVATE PROPERTY → EXCHANGE → MARKETS → PRICES → COMPARISON OF ALTERNATIVES → ECONOMIC CALCULATION.

The planner eventually faces a deceptively simple question:

> **"How do I know that this is the best use of these resources rather than the hundred other things we could have done with them?"**

That is the calculation problem.

PROPERTY IS NOT SACROSANCT BECAUSE PROPERTY OWNERS ARE SAINTS

The Austrian defence of property does not require believing that property owners are virtuous.

Quite the opposite.

Property rights are necessary precisely because human beings are not saints. We have conflicting preferences, limited knowledge and scarce resources.

Civilization therefore needs rules answering basic questions:

Who owns this? Who may use it? Who may transfer it? Who bears the cost of destroying it?

Private property answers these questions through decentralized ownership.

Socialism increasingly attempts to answer them through political authority.

That creates a more fundamental inequality than the inequality socialism claims to solve:

THE INEQUALITY BETWEEN THE CITIZEN AND THE CONFISCATOR.

The entrepreneur may own a factory. The state possesses the power to take it.

The citizen may own land. The state determines the conditions under which he may retain it.

The ultimate concentration of economic power therefore need not be private.

IT CAN BE POLITICAL.

And once the state becomes the ultimate allocator of property, economic decisions increasingly become political decisions.

EXCHANGE REQUIRES OWNERSHIP.

Weakening ownership therefore weakens the market itself.

THE SOVIET LESSON

The Soviet experience revealed another problem with collective ownership.

When something belongs to everyone, responsibility can become strangely diffuse.

WHO IS GOING TO MAINTAIN IT?

The Soviet system became notorious for shortages, waste, poor maintenance and diversion of resources.

Even in the post-Soviet Russian military context, there have been reports of valuable metals such as copper being stolen from military equipment, reportedly bringing a 40-km convoy of tanks to a halt during the Ukraine war. The broader lesson is:

WHEN OWNERSHIP BECOMES EVERYBODY'S RESPONSIBILITY, IT CAN QUICKLY BECOME NOBODY'S RESPONSIBILITY.

Private ownership gives someone both the benefit of good stewardship and the cost of bad stewardship.

RAU'S LIBERAL INSTINCT

B. N. Rau understood something that many later constitutionalists forgot: property rights are not decorative privileges.

Rau insisted that when the state takes private property, compensation must be meaningful and enforceable, with the judiciary able to protect the individual.

Otherwise, a "fundamental right" becomes a legal fiction — a beautiful sentence on paper standing helplessly before political power.

Germany had already supplied the warning.

The Weimar Constitution declared property "inviolable," while simultaneously allowing legislation to determine otherwise.

That is the constitutional magician's trick:

> **"YOUR PROPERTY IS INVIOLABLE — SUBJECT, OF COURSE, TO WHATEVER WE DECIDE."**

Rau recognized the danger.

India nevertheless moved in that direction.

THE SOCIALIST ASSAULT ON PROPERTY

Jayaprakash Narayan and the Congress Socialist tradition represented a fundamentally different conception of property.

Property was increasingly treated not as a right existing prior to the state, but as something that could be redistributed whenever political authorities invoked "social justice."

The state was no longer merely the protector of property. It increasingly became the authority that could determine its distribution.

If one person can obtain another person's property through political power, the law ceases to function merely as a neutral framework of rules. It becomes an instrument of redistribution.

INEQUALITY BEFORE THE LAW PRODUCES LAWLESSNESS.

Rule of law increasingly becomes the rule of political discretion and vote-bank politics.

THE CONSTITUTIONAL DILUTION

The original constitutional protection of property was progressively weakened.

The courts initially attempted to give compensation substantive meaning, but political amendments increasingly reduced the judiciary's ability to determine whether compensation was genuinely adequate.

The 25th Amendment in 1971 replaced the constitutional language of **"compensation"** with **"amount."**

That conceptual change was enormous.

COMPENSATION ASKS: "WHAT IS THE OWNER ENTITLED TO?"

AMOUNT ASKS: "WHAT HAS THE GOVERNMENT DECIDED TO GIVE HIM?"

The difference is the difference between a right and a government-determined allowance.

THE 44TH AMENDMENT: THE FINAL DEMOTION

Then came 1978.

The 44th Amendment repealed Article 31 and removed the right to property from the list of Fundamental Rights.

What remained was Article 300A:

> ***"No person shall be deprived of his property save by authority of law."***

Property survived.

But its constitutional status was dramatically reduced.

A constitutional order can therefore have elections, courts and legislatures — and still progressively weaken the economic foundation of individual freedom.

FROM PROPERTY RIGHTS TO POLITICAL ALLOCATION

The tragedy is larger than the repeal of one Fundamental Right.

India progressively moved from the idea that government exists primarily to **protect individual rights** toward the idea that government may **reconfigure individual rights in pursuit of collective objectives**.

That is a profound constitutional transformation.

Rau understood the danger.

Mises explained the economic consequences.

Coercive appropriation of legitimately acquired property as **institutionalized theft**.

> **If the state can ultimately decide who may keep what he owns, in what meaningful sense does the citizen own it?**

THE SHRINKING-MARKET FALLACY

When property rights are weakened, markets shrink. When markets shrink, fewer genuine exchanges occur. When fewer exchanges occur, fewer genuine prices emerge. When prices become distorted or disappear, opportunity costs become increasingly difficult to determine.

Capital allocation consequently becomes increasingly blind.

Yet the resulting failures are often blamed on "capitalism."

This reverses the causality.

THE PROBLEM IS NOT CAPITALISM.

THE PROBLEM IS THE SYSTEMIC DAMAGE CAUSED BY THE ABOLITION OR CRIPPLING OF CAPITALISM.

Marxists, National Socialists and Nazis differed profoundly in ideology and in the degree and form of state control. But they shared hostility toward liberal economic institutions and the temptation to replace decentralized market coordination with political organization.

The underlying temptation was:

REPLACE DECENTRALIZED DECISIONS WITH CENTRALIZED DECISIONS.

Mises showed why this cannot reproduce the knowledge generated by markets.

You cannot abolish the market and then complain that the market is failing to provide the information you have just abolished.

You cannot destroy the price mechanism and then demand rational capital allocation.

Socialist economies may still have administered prices, foreign prices and black-market prices. But these are no substitute for a functioning network of freely formed prices for privately owned productive resources.

The more the market is crippled, the more incomplete and distorted the information becomes — and the greater the role of political allocation.

THE REAL CONSTITUTIONAL BETRAYAL

The issue therefore goes far beyond one constitutional amendment.

Democracy does not magically transform coercion into consent.

A majority vote does not turn confiscation into voluntary exchange.

Calling redistribution "social justice" does not change the underlying economics.

PROPERTY RIGHTS ARE NOT THE ENEMY OF ECONOMIC FREEDOM.

THEY ARE ITS FOUNDATION.

The Austrian answer to Ambedkar is therefore not that property owners are sacred.

It is that private ownership is an institutional mechanism for dealing with scarcity, conflicting preferences and limited knowledge without making every economic decision a political struggle.

The deeper danger is not that some people possess property.

It is that political authorities acquire the power to decide **who may possess what**.

Take away strong protection for property and the question changes.

It is no longer:

"WHO OWNS THE PROPERTY?"

It becomes:

"WHO CONTROLS THE PEOPLE WHO DECIDE WHO GETS TO OWN IT?"

And that is a much more dangerous question.