

Asymmetrical Arrangement of Federalism with Special Reference to India

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Abstract

The objective of this paper is to examine the asymmetrical arrangement of federation especially in India. Asymmetry is inherently linked with all federations. The meaning of asymmetry federalism is, federalism based on unequal power and relationship in the political, administrative and fiscal arrangements sphere between the units constituting the federation and it can be viewed in both vertical (between centre and states) and horizontal (among the states) senses in a federation. However, there was an agitation in the existence of asymmetry which makes the federation stable or unstable. To run the federation successfully, few people think there should be limitations in asymmetry.

The central government in India have the power, and it actually does invade the legislative and executive domains of the state. India being such a diverse country accommodates various sub-national and ethno-cultural identities in some cases, constitutional recognition has been given to the asymmetrical arrangement. So far Indian federalism is running successfully.

Keywords: Asymmetric Federalism, Federation, Federalism, Confederation, Subcontinent, Social-Economic Diversity.

Introduction

This paper provides an overview and analysis of asymmetry in Indian federalism. India is an ancient country. India's civilization and culture are full of variations. In India we can see the amalgamation of various races, languages, religions, and cultures. In fact, India is a large and variegated cultural subcontinent. India's people are divided into many small communities on the basis of the geographical formation, local history, language, religion, nationality and economic development. In this context, various rival multiparty systems are also established in India. In this multicultural circumstance, Indian federal system is capable of establishing the national integration. This federal system is established as a weapon to administrate the conflict between the various races and communities. In recent times in Asia's three countries-India, Pakistan and Malaysia the federal system has established formally, in the only India's federal system become relatively successful. In the year 1965 Singapore has been deviated from Malaysia. In 1971 Bangladesh is also separated from Pakistan. Though we can see that there are so many crises arises in the political system of India, but with the help of the democracy and federal system India can protect its multiculturalism and provincial autonomy in one hand and on the other hand its national integration is established. In fact, India is not a nation state, but a multicultural federation.

The paper is structured as follows:

In Section I, I briefly described the meaning, features and evolution of federalism. I focused on the definition of federalism given by many thinkers. In Section II, I examined meaning of asymmetry and asymmetrical arrangement in global context. Basically we see two types of asymmetry, political and constitutional. In Section III, I discussed about the asymmetry seen in India and its historical background.

Section I

The federal system is such a system of governance in which the government at the regional level and the government at the national level share power among themselves. Federalism denotes a mixed form of government. It denotes the synthesis of the regional and the general government within a political system. The government at the national level is called the central government or the federal government and the regional government is called in various places by various names such as state, province, canton, territorial government and so on. The constitutional or government structure that grows within a Federation is called Federalism. Federation is a process through which certain separate States get transformed into one Federal State. And Federalism is a special type of government that develops within a Federal State. Federation, confederation and unitary state they are not the same.

According to Watts (1996) “Federalism is basically not a descriptive but a normative term and refers to the advocacy of multi-tiered government combining elements of shared rule and regional self-rule”.

According to Riker (1975) “Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.”

According to Elazar (1991) “Federalism is a partnership between individuals and families leading to the formation of a body politic and between bodies politic leading to the creation of compound polity”.

The Federal system, as a concept, is ancient. The notion of Federal system has grown and developed since ancient times. The concept of federal system was first found around 3200 years ago among the ancient Israeli tribes. Apart from that, such a system had also developed in various North American, Greek, African and Asian tribes. Even the Roman Republic had formed a sort of unequally distributed federal structure. Various medieval self-governed cities were connected to each other through Loose Confederation, for the purpose of trade, commerce and defence. Because of this fact, the Swiss Confederation was formed in the year 1291. Though, the newly independent nations had established the federal system after the American revolution of the year 1781, these systems had certain shortcomings and deficiencies in them. These deficiencies were rectified through the Philadelphia Convention of 1787 and in 1789 the first modern federal system came into existence. In fact in the year 1848, after the civil war, the Confederation in Switzerland also assumed the form of a Federation.

Apart from these, Australia and Canada also formed the federal system. During the nineteenth and the twentieth century several countries in Latin America adopted the federal system. From twentieth-century onwards, especially after the Second World War, the notion of federal system began developing. The newer Asian and African nations started depending on federal principle in order to free the nations from the various ethnic troubles, thereby peacefully unifying the nations. Even the west Asian and the eastern Mediterranean regions also had to face the same problems. The federal system grew and developed in various Asian countries such as Indonesia, India, Pakistan and Malaysia; African countries like Libya, Ethiopia, Nigeria, Congo, Mali and Cameroon; West Indies and several other places. However, this system could not be successfully implemented in all of these places. Apart from Asia and Africa, the federal system has been adopted by Central and European regions such as Austria, Germany, and Yugoslavia, Czechoslovakia and certain other South American regions such as Brazil, Venezuela, Argentina and many others as well. To sum it up, with the creation of nation states after the Second World War, the establishment of federal system also gained wide popularity as a path breaking idea.

The common structural characteristics of Federalism are the following:

1. Two orders of government each acting directly on their citizens.
2. A formal constitutional distribution of legislative and executive authority and allocation of revenue resources between two orders of government ensuring areas of genuine autonomy for each order.
3. Provision for the designated representation of distinct regional views within the federal policy-making institutions, usually provided by the particular form of the federal second chamber.
4. A supreme written constitution not unilaterally amendable and requiring the consent of a significant proportion of the constitutional units.
5. An umpire (in the form of courts or provision for referendums) to rule on disputes between governments.
6. Processes and institutions to facilitate intergovernmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap.

Section II

Federalism is not a new concept, but it is a complex one. It was not born out of theory, but rather out of necessity. It was a pragmatic approach utilized by States for primarily military and economic reasons. But the purpose of forming Federalism is not just the establishment of uniformity. Federalism also aims at protecting various kinds of diversity and accommodating diversities those within a single space. This notion of Federalism entails Asymmetry. The concept of Asymmetry remains concealed within every Federation. There is no reason to think that any Federation would be characterized by complete equality and symmetry. A symmetrical Federation is the ideal type of Federation. Complete equality is neither possible nor desirable in any Federation. Inequality can be observed in every Federation or

confederation, in one field or the other. However, that does not necessarily mean that every Federation would be filled with inequality. Every Federations must strive towards minimizing inequality. The presence of a high degree of inequality in a Federation causes difficulty in sustaining it.

According to Charles D. Tarlton, recognizing and acknowledging diversity alone will not resolve all the tension within an Asymmetrical System. He placed more emphasis on Centralization. According to him it is possible to achieve synthesis among the various units of a political system through the establishment of Symmetry. From his point of view, Asymmetry proves to be inconsistent in achieving stability within a polity. Asymmetry is a bone of contention among various Federations in the present time. On one hand, many scholars have argued that asymmetrical federalism only serves to entrench differences, solidify divisions and encouraging secession. On the other hand, some scholars have argued that Asymmetry is a positive method of increasing stability in any Federation (by recognizing and accommodating various diversity). Therefore, whether Asymmetry hinders stability or ushers in instability in any Federation is still an issue that is fraught with questions.

Normally, we find two types of Asymmetries in a federal system- Political Asymmetry and Constitutional Asymmetry. According to Ronald Watts, 'Political Asymmetry arises from the impact of cultural, economic, social and political conditions affecting relative power, influence and relations of different regional units with each other and with the federal government'. This political asymmetry can be observed in every federation. But Constitutional Asymmetry may not be present in every Federation. Constitutional Asymmetry mainly arises out of the restoration of power to the various regional units, through the Constitution. Political asymmetry lies hidden within the regional units of every Federation. In this case, certain factors like people, territorial size and economic resources can influence centre-state and inter-state relations to a large extent. Asymmetry acquires gigantic proportions in those Federations where one or two regional units hold maximum power. The magnitude of Asymmetry remains high in those Federations where the population of any one regional unit exceeds half of the total population of the Federation. Prussia within German Federation, Jamaica within West Indies Federation. East Pakistan within Pakistan, Russia within former USSR, and the Czech Republic within Czechoslovakia prior to separation of 1992 and the Flemish region within the current Belgian Federation are a few examples of this kind of Asymmetry. On the other hand, examples of places where two constituent units are more dominant are Ontario and Quebec in Canada's combined population of 62 percent) and New South Wales and Victoria in Australia (combined population 60 percent). Apart from these, in places like Belgium, Germany and South Africa, political asymmetry among regional units that remain has been the product of constitutional revision. Apart from population, territorial size and wealth also significantly increase asymmetry among the regional units. This political asymmetry among the units influences their ability to exercise constitutional powers. Political Asymmetry within Federations has created a site of instability and tension within each

Federation.

Though not found in all Federations, Constitutional asymmetry is found in quite a large number of federations. Constitutional Asymmetry lies chiefly within the Constitution. The inequality that is observed in the distribution of administrative and legal powers among the regional units (by means of the Constitution) is itself a glaring display of Constitutional Asymmetry. In several federations, the distribution of executive, jurisdictional and financial powers is equal. Whereas, in many cases, unequal power distribution takes place due to the variation in geographical size, population and certain other factors. Besides, in Malaysia, the Centre possesses Taxing power instead of distributing it among the states. This is why, tax sharing is delayed in case of those states where opposition parties exist. As the states do not possess any taxing power, they are bound to remain dependent on the Centre. Besides, an Asymmetric Relationship is observed in the case of power distribution. While the 11 States of the Malay Peninsula enjoy equal power, the two Borneo States enjoy 'Greater Autonomy' for the purpose of protecting their 'Non-Malayan' interest. As a result, the rest of the states feel deprived and discontented (Watts 1996:26). Centre, due to its discriminatory treatment towards these states, casts an adverse impact on the Inter-governmental Relation. Broadly speaking, three types of Constitutional asymmetry are observed.

- 1) In certain Federations, federal authority is increased in certain specific fields while regional autonomy is decreased. For example, in India and Nyasa land (1953-1963).
- 2) In certain cases, the power of certain regional units is increased. One such example is when the Borneo states joined with the Malaysian Federation in 1963.
- 3) Such arrangements retain the formal symmetrical application of the constitutional distribution of powers to all member states, but provide specific means for accommodating within that framework a de facto asymmetry among member States in the exercise of these powers.

Constitutional Asymmetry is not just observed in India, but in various other nations as well. The European Union, Russia and Belgium have exhibited some degree of constitutional asymmetry in the application of jurisdiction. The European Union, at various times, has had to make particular concessions in order to grant access to new members. Furthermore, the European Union found it necessary to accept some degree of asymmetry, particularly with reference to Britain and Denmark, in order to successfully adopt and implement the Maastricht Treaty. The Russian Federation is currently the most complex example of constitutional asymmetry in a federal political system. The Russian Federation has to perform negotiations among the 89 component units that consist of republics, oblasts, okrugs etc. Many of the constituent units of the Russian Federation have concluded bilateral treaties providing for an asymmetrical treatment, all the while remaining within a formally symmetrical framework. In the Belgian federation, asymmetry exists in the interrelation between Regional Councils and Community Councils and the jurisdictional differences of the three territorials constituent regions

and the three non- territorial constituent communities.

The constitutional allocation of financial resources significantly influences the power and autonomy of that the member states exercise. Constitutional asymmetry among regional units of a Federation introduce complexity. Nevertheless, in some Federations, asymmetry in the constitutional distribution of power has proved to be indispensable in accommodating the varying pressures for regional autonomy. Malaysia, Canada, India and Belgium are most notable examples of this. In other cases, asymmetry has proved to be useful in transitioning from one political stage to another. Examples of these are the asymmetry in Spain to accommodate autonomous communities and in Europe to accommodate “variable geometry” proceeding at “Varying speeds”. In some cases, asymmetry has produced a counter-demand for symmetry. In Canada and Spain, it has been observed that asymmetry beyond a certain limit is bound to create dysfunctions. Nevertheless, certain Federations have made way for constitutional asymmetry in order to accommodate differences between constitutional units and are still running efficiently

Section III

India is an example of asymmetrical federalism. The process of formation of federalism is the main reason for asymmetric arrangement. In India federalism was formed by division. Earlier India was a single state which was then divided into different states based on factors like language, culture, race, ethnicity etc in order to 1956 State Reorganization Act for the same reason there is so much asymmetry among constituent units. At first, we have to know the historical background of Indian federalism.

India is a subcontinent. Its population is huge. In various regions, there are wide range of differences between the socio-economic, political tradition and life style. In such a multicultural country, the unitary ruling system must be fail. Therefore we can see that any emperor or king cannot constitute their rule or control over India for long times for an example, we can say about the Mourya empires, Mughal empires etc. In fact it is quite impossible for any individual central government to establish their rule in such like country. During colonial period the concept of regional autonomy is quite insignificant. Makbul Ali Laskar has pointed out the historical and institutional events that worked behind the formation of Federation in India. He has even discussed the territorial and non-territorial facets of Indian Federalism. He has also discussed how the British came to India with the intention of carrying out business, how they gradually established a stronghold in India's politics, administration and economy, the various laws that had been passed by the British in the Parliament in order to rule India, the contribution of the Government of India Act of 1935 towards the formation of Federalism in India etc.

However, an asymmetrical pattern of power-sharing at the national, local and provincial levels can also be observed in pre-Independence Mughal and British India. Various asymmetrical proposals had sprung up before the Indian independence. The Cabinet Mission of 1946 said that India shall be

constructed in the form of a confederation. The nation shall have a weak government, under which there will be two powerful confederation units, one Hindu-majority province, one Muslim-majority province and a Princely state. On the other hand, on 13th December of the year 1946, Jawaharlal Nehru in his Objective resolution presented the proposal of a parliamentary Federal system with a strong centre. Another proposal had sprung up. The proposal had been presented by the Congress leader of Madras Chakravarty Rajagopalachari (CR) who said that India shall be a Confederation of two groups of states in terms of their territorial location in the north and the south. However, the confederal schemes with asymmetrical features have not been accepted. After the CR and Cabinet proposals were rejected, the Constituent Assembly decided to set an Objective Resolution, in other words, a parliamentary federal Constitution with a strong centre. Therefore, we can see that an asymmetric arrangement of Indian Federalism was already in existence which gained acceptance through the Constitution, in the post-independent period. The constituent units of the Indian Federation are very unequal in terms of size, population and resources. These unequal characteristics of the constituent units are reflected in asymmetrical federal relations. In India, various states have been formed on the basis of various factors such as language, race and culture. Due to this reason, the states vary greatly from each other which in turn causes each state to have a different kind of relation with the Centre. These differences arise out of the distribution of executive, financial and jurisdictional power among states. Certain kinds of asymmetry have been accepted in the Indian federal structure, which are to be discussed in the following section. The constitution of India provided certain rights and privileges to the rulers of Indian States (princely state) under Article 362, which was later repealed by the Constitution 26th Amendment Act, 1971. Under Article 370, special privileges have been granted to Jammu and Kashmir. According to Article 370, Jammu and Kashmir have been excluded from the uniform constitutional structure of India. Jammu and Kashmir has been granted permission to frame their own constitution. Because of the special provisions given to the 8 tribal people of Jammu and Kashmir, they have acquired a unique position in the Indian Union. In order to accommodate ethno-cultural diversity within the Federal system, certain constituent units of India have been granted special provisions (under Articles 371, 371-A, 371-B), which has given constitutional recognition to the asymmetrical arrangement. According to Article 317(A), Nagaland has been granted special powers. The Parliament cannot legislate in particular fields such as (a) religious and social practices of the Nagas. (b) Naga customary law. (c) Ownership and transfer of land and its resources. The parliament cannot make laws in the aforementioned fields, unless and until it is granted permission by the Legislative Assembly of Nagaland. Under Article 371(G), Mizoram has been granted some special provisions. According to Article 371(B) and Article 371(C), the President may, by order made with respect to the State of Manipur, provide for the constitution and functions of a committee of the Legislative Assembly of the state consisting of members of that assembly elected from the hill areas of the State. According to

Article 371(D), Andhra Pradesh too has been given special status. The article also talks about granting equal opportunity to every resident dwelling in different parts of the State, as far as public employment and education is concerned. Article 371(F) has granted special provisions to Sikkim. It talks about preserving the interests and rights of every resident dwelling in every section of the state, by reserving seats for them in the Legislative Assembly. Under Article 371(H) the governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the state of Arunachal Pradesh. Under Article 371(I), Goa has been granted a special provision. The provision is that the Legislative Assembly of Goa shall consist of not less than thirty members.

The Fifth and Sixth Schedules have made more Asymmetrical arrangements in order to accommodate other sub-national diversity within the Federal System of India. Sixth The schedule is different from the Fifth Schedule. Under Articles 244(2) and 275(1), the tribal people of Assam, Meghalaya, Tripura and Mizoram have been granted special provisions. In accordance with the Sixth Schedule, an autonomous district and regional council with law-making power, has been formed for the tribal people. These autonomous councils are directly governed by the Governor. This Sixth Schedule allows for the creation of area-specific development boards, particularly in those places that come under HDI. Under Article 244(1), the Fifth Schedule deals with the control and administration of the scheduled areas. The Fifth Schedule talks about the formation of a Tribes Advisory Council for the tribal people. Apart from special provisions for tribal people, provisions have also been granted to the union territories of Delhi and Puducherry. These are the provision of Legislative assemblies in these two union territories and the provision for setting up High Courts in Union Territories (Article 239-A, 239-AA, 240, 241 etc).

Apart from these, the significant difference of the representation of states in the Union Parliament in fact reinforces the need for special asymmetrical federal provisions for the smaller constituent states of the Indian Federation. Under clause 4 of Article 80, the members of the Council of States must be elected by the elected members of the Legislative Assembly of the States through a single transferable vote system on the basis of proportional representation. As a result of this, ten populous states occupy 160 seats which constitutes more than seventy percent of the total number of seats. Due to this, the smaller states are deprived of equal representation in the Council of States. Sikkim and other northeastern tribal states get one seat each in the Rajya Sabha. This asymmetrical nature of representation augments the inequality in the federal structure. But in the U.S.A., all states, small or big are accorded equal representation in the federal second chamber. The Senate is also given equal power with the House of representative in most matters and certain special powers e.g. ratification of executive and diplomatic appointments made by the president and international treaties signed by him or her. At present, because of the FDI, certain units are progressing rapidly with the help of maintaining a healthy relationship with the Centre. However, all states are not able to do the same.

Another kind of political asymmetry is seen in the sphere of fiscal federalism in terms of the distribution of revenues between the union and the states, the distribution of taxes between them, and grants from the union to certain states. Asymmetry is observed even regarding the grants that the states receive from the Centre through the Planning Commission created by the Nehru government in 1950 (NITI Ayog at present). 1990s onwards, Maharashtra, Andhra Pradesh, Rajasthan and Gujarat have registered a rate of economic growth above the national average. On the other hand, Bihar, Uttar Pradesh and Orissa have experienced economic decline. This has led to economic disparities in the post-1990s globalization era.

Conclusion:

So, asymmetrical arrangement has been observed in various fields in India. India is chiefly a multicultural, multilingual and diverse country. These varieties and the various diverse identities of people have been constitutionally accepted. The Asymmetrical arrangement in the Indian Federation has been made chiefly with the view to accommodating various clans in a single space by granting them special provisions. While the presence of Asymmetry highlights the instability in a Federation but the Indian Federation, like many other Federations, is running successfully.

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