

A Review of India's Federal System and Accommodation of Ethnic Diversity

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Abstract: The paper seeks to understand the broader picture of Indian federal system that sets the scope of both powers as well as limitations, within which state and sub- state level institutions are created and sustained. In order to maintain unity in diversity, the Indian federal system have been evolving from a symmetrical model to that of an asymmetrical one incorporating both de jure and de facto arrangement to address the emerging concerns of autonomy by diverse ethnic groups.

Keywords: India's federal system, symmetrical and asymmetrical federalism, de facto and de jure federalism.

Defining the Nature of Indian Federal System

In order to understand the working of federal system in India, we have to go through the background within which India incorporated federal principle as well as the gradual de jure and de facto arrangement that have been deliberated upon and evolved. While in a democratic country like India the existence of wide range of diversity in terms of religion, language, ethnicity, region etc have made the incorporation of federal principle a natural phenomenon, but it is more of practical consideration rather than the concern for democracy that worked upon. There were more than 500 princely states during the time of India's independence most of which joined the Union. In that situation it was politically expedient either to treat some of these states as new provinces or to merge them with the adjoining territories. The federal arrangement

provided space for their incorporation and offered a way of holding different territories with diverse histories as a single unit. (Mahajan, 2007, pp. 86-87)

As He (2007) articulates it is the presence of national identity question in most of the Asian federalism that require adoption of ‘hold together federalism’ rather than ‘bring together federalism’. India’s nation building project has undergone contestation in the absence of any singular, homogenized national identity. In this context the hold together federalism maintain that retaining unity of the nation is the first priority. It must adopt asymmetrical characteristics in order to hold the country together by making special deal with one sub- group or the other if require by proving preferential distribution of rights and powers. By contrast bring together federalism is symmetric.

Indian federation was not a result of compact among its constituent units. The mode of federation making was a top- down process rather than bottom- up. The Constituent Assembly that frame the federal constitution was comprised of members elected on the basis of limited franchise and they were not representative of the states. The Constituent Assembly did not manifest deep seated conflict of interests as reflected in the Philadelphia in 1787. While presenting the Draft Constitution, Dr B. R. Ambedkar, the Chairman of the Drafting Committee, remarks that unlike the Constitution of America, the Indian Constitution avoided the “tight mold of federation” and embraced “both unitary as well as federal according to the requirements of time and circumstances” (Bhattacharyya, 2005, p. 14). Administrative convenience and political expediency guided the organization of the new units rather than cultural identities. Although the framers of the Constitution makers were deeply aware of the existing diversity but experience of partition of the country in the recent past have make them reluctant to create cultural communities as the basis of political identity. Therefore cultural communities were accommodated through special cultural rights but not political rights. Thus the concern for national unity and integrity was given an upper hand over recognition of diversity.

Post- Independent India and Challenge to Indian Federal System

The post independence period of India had been undergoing lot of challenges with growing demand for creation of new state on the basis of language, religion, ethnic diversity that compel scholars like Harrison to remark the same as ‘the collapse of the Indian state’. During this period there emerged growing assertion from Naga and Mizos for separate homeland. The

phase between the late 1960s and late 1970s was considered as the most complicated for Indian democracy and federalism. Since the 1980s there emerged relentless concern for states' rights, regional and local identities become foreground. In this period, the Bodo movement for separate homeland becomes more organized. Such local level assertion poses a threat to the very existence of India's federalism. However, even in such situation Indian federal system had innovated newer model of federal arrangement to maintain India's unity in diversity. Ombwall viewed it from an ethno-nationalist standpoint and pointed out to the "requisite institutional and procedural flexibility and resilience" of Indian federalism "to accommodate ethnic and regional discord while at the same time, defining the parameters within which such discord will be tolerated." (Bhattacharyya, 2005, pp. 18-20)

As Mahajan (2007) also articulates in the situation of growing discontent, the presence of a federal structure played a critical role in accommodating these communities and keeping the country as one by providing for reorganization of the states. The failure to recognize the same perhaps would have pushed them towards dissenting nationalism. This experiment proved that cultural identity can coexist with national identity that means multiple and complementary identities can coexist in the political imagination of its holders. However this does not mean that the path of federalism is so easy. In fact the concession leading to the recognition of a group as separate, self-governing communities have been made as a last resort when other options failed or yielded inadequate results. This is particularly true where cultural identities used anti-national rhetoric and employed violent means to assert their demands.

Along with growing ethnic challenges, other factors were also equally working that compelled India's centralized federal system adapting to change by a process of multilevel and asymmetrical innovations. Arora articulate that the 1990s is the turning point for India's polity, as it cemented the way for a political system that make federalism more stronger than ever before. With the appearance of federal coalition, new mode of participation and representation had to be recognized with the increasing role of the state level political parties. In fact such coalition politics paved the way for sub regional political parties to play important role in the formation of government at the state level. The single state and multi-state parties have begun, through the political process an improved level of participation in national policy making which

otherwise could not have been achieved through formal institutions of cooperative federalism (Arora, 2007, p. 7).

Combination of Federalism and Regionalism

The need for federalism is enhanced in ethnically diverse countries where territorial accommodation of ethnic diversity is greatly demanded. For these countries a combination of shared rule and self is a necessity if unity and integrity are to be maintained. Bhattacharya argued on the following lines (Bhattacharyya, 2005, pp. 3-4):

Firstly, there is no inherent conflict between federalism and regionalism. The need for equilibrium between the two is of extreme importance if unity of the country is not to be risked.

Secondly, it is federalism rather than nation states that better able to accommodate distinct ethnic identities as federalism recognize difference while nation state demands uniformity.

Thirdly, a two tier federal arrangement may not be sufficient to deal with every form of regionalism. Sometimes it may require a sub- state level federal framework where region at the level of sub- state or provinces may be bestowed sufficient accommodation and recognition with proper constitutional guarantee.

Fourthly, regionalism may itself be a practice for resolving ethno regional multiplicity provided there are sufficient constitutional guarantee as well as sufficient ethno- political pressure from below are available. It is through this technique, the spill- over effects of regional discontent can be contained.

Bhattacharya (2005) assert that Constitution of India remain a great source that facilitate the demand of regional movements for self- determination and their bargaining for an appropriate political institution within which they will secure distinct ethno- regional identity. He talks about two types of accommodation: non- territorial and territorial accommodation. The non- territorial arrangement in case of Bodos is significant. The Constitution Ninety- second Amendment Act, 2003 have included the Bodo language in the Eight Schedule of the Constitution (Bakshi, 2011, p. 373). This method as interpreted by Bhattacharya seeks to accommodate linguistic groups in three ways:

1. It fulfills the need for linguistic identity to the distressed community.
2. It bestows the particular community with the right to read, among others, all official communications and documents in their own language that is their mother tongue.
3. Such language as constitutionally guaranteed under the eight schedules, become the third language in the 'three language formula' that include Hindi, national language; English, link language and the language in the eight schedules.

Asymmetrical Federalism and its Relevance

In this context Rekha Saxena articulates that Indian federalism has post modern prospective in the way in which it has incorporated both de facto and de jure asymmetrical arrangements. Although there exist lot of ambivalence regarding whether India is a case of asymmetrical federalism, Saxena admits that India does embrace constitutional asymmetry in dealing with the Border States in North West and north east India like Jammu and Kashmir, Nagaland, and Mizoram. While early writing on asymmetrical federalism have taken the view that such arrangement will lead to secession, the most recent comparative treatment of the subject asserts that asymmetrical federalism has the potentiality to help stave off secession rather than inherently secessionist. The propagator of the former view perhaps base their assertion on the classical French and American federalism that stand for an ideal of nation state based on symmetrical rule of law for all citizens of the nation as well as equality of liberty and fraternity. This attitude also developed in the post- colonial nations like India. At the time of liberation, India reacted strongly against the imperial rule of divide and rule policy that played one community against the other. However the gradual experiment of asymmetrical arrangement with the North eastern states has shown that such arrangement in reality can accommodate multiple identities within a single state. India took almost a half a century to develop some degree of asymmetrical federalism by providing concessions and special status to some of its units. (Saxena, January, 2012)

Ronald Watts make a theoretical distinction between political and constitutional asymmetry. The former is evident in the geographical and demographic size of the units whereas the later is entailed in the constitutional arrangement that grant different legislative and executive power to the different regional units. India embodied both of these features. In terms of political asymmetry we can refer to the number of seats assigned to the states in the Rajya Sabha. Unlike

American Senate, the Council of States in Indian context is not based on formal equality but on population basis. Therefore states like Uttar Pradesh have thirty one seats whereas states from North East India like Meghalaya, Mizoram, Manipur and Pondicherry and Goa have just one seat each. In terms of constitutional asymmetry, the Constitution of India recognizes separate constitution for the state of Jammu and Kashmir and provides special status to the states of Nagaland and Mizoram under article 371 A and E respectively. Article 370 of the Indian Constitution has restricted the power of Parliament to formulate laws for the state of Jammu and Kashmir to foreign affairs, defence and communication as specified in the Instrument of Accession, the basis for joining of the Union by the state in 1948. Similarly in the context of Nagaland and Mizoram, Article 370 A and E respectively provided that Parliamentary law cannot be extended to these states without the consent of the Legislative Assemblies of these states, if the concerned laws are related with the socio- religious practices of the Nagas and Mizos, their customary laws, administration of civil and criminal justice.

Besides these state level asymmetrical arrangements, there have been sub- state level asymmetries in the Indian Constitution that manifested in the differential treatment to its seven Union Territories (UTs). These UTs have been created at different times by entailing specific constitutional provisions with a view to cope with the cultural specificity, interstate disputes, and particular necessities of National Capital Territory (NCR) and far flung remote location of these regions on the coast.

Along with these provisions, time and again India has manifested specific asymmetrical arrangement both in terms of political as well as constitutional asymmetry. These arrangements can be enlisted as follows:

Firstly, specific asymmetry has been shown in dealing with the government of the tribal areas, intra state regional disparities, law and order condition, and seats arrangement in the state Legislative Assemblies in relation to the states of Maharashtra, Gujarat, Assam, Manipur, Andhra Pradesh, Sikkim, Arunachal Pradesh, and Goa in the Constitution of India.

Secondly, in the states of Maharashtra and Gujarat, the Governor has been assigned with special responsibility to establish separate development boards for certain backward regions of the states. In these regions the Governor has to ensure equitable distribution of development

funds and provision of facilities in mechanical education, professional training and employment opportunities.

Thirdly, the Constitution has obliged the President of India to guarantee the setting up of a committee of the Legislative Assembly in the states of Assam and Manipur to look after the wellbeing of the tribal communities. These committees have to be composed of Legislative Assembly members from those tribal communities.

Fourthly, with regard to the different regions of Andhra Pradesh, the President has to ensure equitable opportunities and facilities with respect to public employment and education and the creation of a central University in the state.

Fifthly, the Constitution has entailed that the number of state Legislative Assembly members in the states of Sikkim and Goa shall not be less than thirty. Also, the Governor of Sikkim has been assigned with special obligation to ensure peace by taking up equitable arrangement for socio- economic progression of diverse sections of the population of the state. Sixthly, the Governor of Arunachal Pradesh has special responsibility to sustain law and order in the state. Also the Governor can act on his individual judgment after consulting the Council of Ministers.

However asymmetrical federalism has been characterized by lot of debate. John McGarry views that asymmetrical federalism does not lead to secession. It is in conjunction with other contextual and political factors that decide whether such arrangement is a deterrent to national unity or not. He is of the view that secession or break up of the units from the federal union is more prevalent in those nation states that entail unitary system and are essentially symmetrical. While there may be temporary or occasional instability and illiberalism associated with asymmetrical federalism, but there is hardly anything inherently unstable or illiberal about it. However on the other hand, thinkers like Charles Tarlton who is credited with having coined the term rather took a more pessimistic view about asymmetrical federalism. For him, asymmetrical federalism is prone to secessionism. Michael Burgess took a more balanced view of the issue by arguing that accommodative and secessionist tendency of asymmetrical federalism is dependent upon particular historical and cultural specificity of the cases in hand.

There is concern over whether India really incorporated asymmetrical federalism. Tillin argue that Article 370 regarding Jammu and Kashmir was included in the constitution in Part XXI under the caption “Temporary, Transitional and Special Provisions”. It was neither included in recognition to the state’s “distinct”, Muslim majority status to implant corresponding group rights nor anticipated as a challenge to India’s composite and equal vision of territorial nationhood inclusive of all religions, languages, and ethnic groups. She considered India’s north-eastern states as coming closest to de jure asymmetrical federalism. However she argue these states “are perhaps better seen as ‘peripheral’ units within India” and approvingly quotes Watts who says “these relationships are quite distinct from those of the main body of constituent units within the major political entity”. (Saxena, January, 2012, p. 73)

Mahajan (2007) argued that positive recognition of diversity at the national level needs to be supplemented by recognition of diversity at the regional level also. We need to create multinational democracy at all levels although it is not easy. India is a multi- nation democracy by most measures where federal system has enabled different nations to govern themselves. However it is argued that such arrangement has not been extended to the nation building at the regional level. The regional level does not show the concern they have themselves received as minorities to existing minorities within the region. Thus although federalism offers a way of accepting diversity within the national polity, but we still need to devise structures and policies by which diversity may be respected within each region.

The assertion that regional level does not show similar concern for the minorities within their region is well manifested in the case of Assam. While the emergence of federal coalition created a turning point in India’s federal process by giving increased level of representation as well as participation to regions at the national level but such pattern is either absent or at best in the initial stage in the regional level. It means the third strata of India’s federalism represented by the sub regional institutions whether it is Panchayati Raj Institutions or the District Councils and the Regional Councils have not still been properly represented. It is due to their lack of bargaining power as they do not hold any significant position of power at the regional level for example the State Legislative Assembly. This is the case with Bodoland Territorial Council. Till 2009, the Bodoland Peoples Front (BPF/ BOPF), the party whose members have majority presence in the BTC had no significant stake in the state Legislative Assembly. This may acted

as critical in limiting their bargaining power over the state government that resulted in dominance of the state government in case of dispersal of funds, lack of their representation in the deliberation of state budget as well not holding significant Department of the state.

However the presences of BPF have been increasing since 2009. The surrendered members of the BLT later formed a political party in 2005 known as Bodo Peoples Progressive Front. The party contested the Assam Legislative Assembly election in April 2006 and consequently emerged as a key player in the state executive and started forming alliance with the ruling party. In the state Legislative Assembly election of 2016 the BPF has gained twelve seats and became the third ally of the winning coalition. Such electoral outcome has significant implication for the BTAD. It will enhance bargaining power of the BPF which in turn can bring the concern of the BTAD into the limelight because the same party has a major presence in the directly elected forty members BTC. Increased bargaining power can ensure timely and prompt transfer of funds from the state to the BTC, greater say in the deliberation of the state budget, an issue considered as a hurdle in proper implementation of the autonomy arrangement by the power holder.

Conclusion

From the above analysis, it become clear that in a region with several minorities, India has at time created sub- regional federations as apparent in the case of District Councils and Regional Councils as ensured under the Sixth Schedule of the Constitution. For the purpose of accommodating minorities, Indian state has shown no hesitation in amending its Constitution. Such process is further accentuated by the emergence of federal coalition politics along with the increased mobilization of the minority communities. In this way the claims of internal minorities have been accommodated without dividing the country into smaller and unviable units.

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