



FEDERALISM AND INTERNAL CONFLICTS

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Asymmetric Federalism in India

Ethnicity, Development
and Governance

Harihar Bhattacharyya

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Federalism and Internal Conflicts

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Harihar Bhattacharyya

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Federalism and Internal Conflicts

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*For Saswati and Sabon
for their love, care and affection*

PREFACE AND ACKNOWLEDGEMENTS

As a study in Indian federalism rather than of this book is centrally concerned with India's federal asymmetry, comprehensively and examines its effectiveness in resolving ethnic conflicts, protecting ethnic identity and delivering development and governance. Asymmetric federalism in India like federalism generally has been facing challenges since the onset of India's neo-liberal reforms from 1991 and, more particularly, from 2014 when the BJP-led NDA came to power at the Centre. Federal asymmetry got a jolt after the abolition of Article 370 in 2019 and demotion of the State of Jammu & Kashmir to a Union Territory status with lesser territory. This was of course a part of the NDA electoral pledge but a lone case in India's post-1950s political history and the history of federalism in India in particular. The most powerful challenge to federalism and asymmetric federalism was the radical transformation of a command economy to a market-driven economy since the 1990s. And yet, most of the institutions of federalism and asymmetric federalism in India were crafted in the days of the 'socialistic' public sector dominated economy, and the various financial assistances to the asymmetric States were more intelligible within the framework of the said political economy. Although the process of institutional reforms was under way since the early 1990s, and during the UPA governments in Delhi (2004–2014), the NDA governments have been since taking it further more aggressively and with political radicalism of the Right brand. The Planning Commission was abolished, and

the NITI Aayog was formed with a different role; the GST was introduced; the Concept of Special Category State was done away with in 2018; the States were re-defined to be competitive and collaborative in pursuing a capitalist path of development with their new found freedom, not by constitutional amendments, or legislatively speaking, but by the fiat of executive federalism. In short, India is indeed passing through radical changes.

There are articles and book chapters on asymmetric federalism in India, but a single book, and that too, as a comprehensive treatment, on the subject, is *terra incognita* in the existing literature on Indian federalism. This book rectifies this neglect and fills the gap. It is centrally preoccupied with the nature and role of various asymmetric institutions and methods in India's federation building, and the functioning, and effectiveness of the same as ethnic conflict mechanisms, and protecting and promoting ethnic identity, delivering better development and governance with two particular case materials. I have asked new questions about understanding institutions: what does an institution deliver? What does it do? Why do institutions work, sometimes, and when they do not do so? Conceived within a dynamic neo-institutional perspective it is argued here that the successful working of representative political institutions including asymmetric institutions is contingent upon a positive interactive role of three factors: actors, institutions and content which in positive combination work better the institutions and vice-versa. Taking a larger perspective, I have offered a new expansive ambit to understand asymmetry in Indian federalism and show that an asymmetric method was followed by the States Reorganization Commission in recommending statehood to different ethnic elites. This book also offers updated detailed survey and statistical data as records of performances of the asymmetric States. Finally, there is a detailed examination of two sub-State level tribal self-governments as cases of federal asymmetry in this book and the book also makes a strong plea to consider a tier beyond the conventional two-tier federalism concept as prevalent in the existing knowledge.

In drafting this book I have incurred debt to some persons and institutions as well as those who volunteered knowledge during field works in Assam and Tripura. The local research assistants in both the States have helped in conducting field works and collecting other data. I wish to record my thanks to Abhisek for extending hands of support in preparing some tables. The Librarian and other staff members of the Burdwan

University Central Library, particularly Dr. Kanchan Kamilya, have also helped in locating books and journal articles.

The International Leverhulme Trust, UK, funded a four-year-long inter-universities project on ‘Continuity and Change in Indian Federalism’ which was based in Edinburgh University and led by Dr. Willfried Swenden of the Department of Politics and International Relation and of which I was a Lead Researcher for the North-East. Dr. Jhumpa Mukherjee, Assistant Professor, St. Xavier’s College (Autonomous), Kolkata, was also part of the above project as a Research Co-coordinator for the North-East and deserves thanks.

Subrata K. Mitra has always stood by me and has been very encouraging. I wish to thank him for his continuous encouragement.

Ambra and Soeren have been very helpful in the penultimate stage in making the passage to Palgrave Macmillan possible. I sincerely thank them. The other expert reviewer deserves thanks too for spotting some infelicities and problems of citations. I wish to record my sincere thanks to Aishwarya and Mathrus for their support in the penultimate days of production. Prof. Apurba Ghosh, and his colleagues in the Environment Science Department of Burdwan University have helped prepare the map for which thanks are due.

My son Sahon has offered considerable editorial support for which he deserves thanks. Saswati has endured yet another book project and must no doubt wonder at times whether the academic in me shall ever retire.

Finally, the views expressed in the book are my sole responsibility.

Burdwan, India

Harihar Bhattacharyya

PRAISE FOR ASYMMETRIC FEDERALISM IN INDIA

“This book by Harihar Bhattacharyya addresses the issue of asymmetrical federalism in the Indian context in a perspective which is extremely provocative and stimulating for researchers. He makes it abundantly clear that India has, for historical as well as political reasons, made a clear break with the traditional understanding of federalism over the years and with the emergence of new identities the question of recognition has come to the forefront. He has very ably shown how the Indian polity seeks to face the challenge of asymmetrical federalism at the institutional level by focusing on the problem of governance.”

—Sobhanlal Datta Gupta, *Former SurendraNath Banerjee Professor of Political Science, University of Calcutta, India*

“Professor Harihar Bhattacharya’s book is the first full-length comprehensive study of various aspects of asymmetrical federalism to take into consideration sub-national levels and made critical examination of institutional performance and relative effectiveness so far generally neglected. It is innovative and thought-provoking.”

—M.P. Singh, *Former Professor of Political Science, an erstwhile Resident National Fellow of Indian Institute of Advanced Study, India*

“The scholarly contributions of Professor Harihar Bhattacharyya have provided a valuable counterpoint over the past many years to the skepticism about the strength and viability of Indian democracy voiced by

the western liberal establishment and its Indian acolytes. In this new book – redolent of the analytical rigour and meticulous fieldwork that one has come to expect from him – Bhattacharyya has taken his core argument about the Indian state at the heart of which lies a dynamic neo-institutional model of state-society relations further, by the way of India’s asymmetric federalism. As he cogently argues, in a country of continental dimensions, this specific feature of the federal system has functioned as an institutional nexus to link regional and subregional units of vastly different size and institutional depth into a web of power-sharing, empowerment and accountability. This is how the post-colonial state successfully transformed subjects into citizens, rebels into stakeholders and pulled peripheral units into the national mainstream. This important book is destined to become a vital addition to the growing literature on federalism and democratisation in India.”

—Subrata K. Mitra, *Professor Emeritus, University of Heidelberg, Germany*

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ABBREVIATIONS

AASU	All Assam Students Union
ABSS	Obor Surokha Samity
ABSU	All Bodo Students Union
ADC	Tripura Tribal Autonomous District Council
AFSPA	Armed Forces Special Powers Act
AGP	Ahom Gana Parishad
AHDC	Autonomous Hill District Council
AHDR	Assam Human Development Report
BAC	Bodoland Autonomous Council
BLT	Bodoland Liberation Tigers
BPF	Bodoland People's Front
BSF	Border Security Force
BTAD	Bodoland Territorial Districts
BTC	Bodoland Territorial Council
CA	Constituent Assembly
CAD	Constituent Assembly Debates
CCP	Chief Commissioner Province
CEM	Chief Executive Member
CEO	Chief Executive Offer
CH	Conferatio Helvetica
CPI	Communist Party of India
CPI-M	Communist Party of India (Marxist)
DGHC	Darjeeling Gorkha Hill Council
DoNER	Department of the Development of North Easter Region
HDI	Human Development Index (UNDP)
INC	Indian National Congress

J&K	Jammu and Kashmir
JVP	Jawaharlal Vallavbhai P. Sitaramiyya (committee of the CA)
LF	Left Front
MDNER	Ministry of Development of the North Eastern Region
MNGERGA	Mahatma Gandhi National Rural Employment Act
NDA	National Democratic Alliance
NDFB	Nationalist Democratic Front of Bodoland
NEDA	North-East Democratic Alliance
NGO	Non-Government Organization
NITI Aayog	National Institute for Transforming India
NLFT	Nationalist Liberation Front of Tripura
NSCM-IM	Nationalist Socialist Council of Nagaland-Issac Muiva
PCTA	Plain Tribal Council of Assam
PEI	Policy Effective Index
PIB	Press Information Bureau (Government of India)
SRC	States Reorganization Commission
TMC	Trino Mool Congress
TNV	Tripura National Volunteers
ToR	Terms of Reference
TUJS	Tripura Upajati Youth Organization
ULFA	United Liberation Front of Assam
UPA	United Progressive Alliance
USSR	Union of Soviet Socialist Republics

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Introduction

Federalism and more particularly asymmetric federalism in India seems to be passing through a challenge since the onset of India's neo-liberal reforms, and more recently the abolition of Article 370 and the consequent loss of statehood of Jammu & Kashmir in 2019 by the current BJP-led NDA government in Delhi as part of the BJP's electoral pledge¹ and the making of two Union Territories of Jammu & Kashmir, and Ladakh, which remains an ethnically distinct territory but was part of the former State of J & K, and arguably not treated by the same with equanimity.² The abolition of the Planning Commission in 2014 and with it of the Special Category States (11 States including J & K) in 2018 seems to be another blow to the above. To be sure, neither the Planning Commission nor the SCSs was part of the constitutional-legislative structure of federalism in India, but an extra-constitutional arrangement that devised a changing mechanism for special plan assistance to be offered to the SCSs. The Plan Assistance remains without the concept of the SCS. But that does not mean the end of asymmetric federalism in India and its importance. The States in North-East enjoy the special constitutional status, are entitled to various other grants from the Centre, and more money by way of the increased share of the States in Finance Commission allocation since 2014. The MDoNER, a separate ministry of the Union government (2004) has been financing a number of projects in the region with remarkable success. Fiscal equalization apart, many States especially with poorer resource bases and geo-strategic locations coupled with a

significant presence of the deprived sections of society such as the Scheduled Tribes receive prioritized development and empowerment grants and schemes either fully and or partly financed by the Centre. The other structural asymmetry in respect of the composition of the Rajya Sabha (Council of States), and the absence of the equality principle of representation of the States to the Rajya Sabha remains. This strongly suggests that not all types of asymmetry are good for federalism. Indian federalism, to be sure, is not perfect (no federalism is), and it is still being made. In light of the above one would say that there cannot be a better time to critically reflect on India's asymmetric federalism, its origin, forms, meaning and significance and effectiveness in furthering the cause of resolving ethnic conflicts, and federalism, i.e. unity and diversity of India, and in producing better development and governance.

This book examines India's experiments with asymmetric federalism and seeks to explain the institutional effectiveness in holding on the vast and complex multi-ethnic country together for many decades. For long, the term 'federalism' was a kind of taboo in discussions on politics and the state even in the West, as a recipe for disintegration and collapse. Although K. C. Wheare³ (1945/1953) wrote the classic book on federalism by being based in Oxford, the British scholarship neglected (Burgess 1985) to pay any attention to it, which was at variance with the British colonialism's role as an exporter of the idea of federalism (like other concepts) to the colonies. In the latter, the concept of federalism underwent a metamorphosis in adapting to the local contexts so as to produce a hybrid character (Bhattacharyya 2016: 72–85). Harold Laski declared federalism as obsolete in 1938 on the basis of his observation of increasing state authoritarianism in the West in the wake of Fascism, Nazism and the War. The post-War (II) interest in federalism was closely associated with the questions of nation and state-building in the post-colonial countries, and that too, in the midst of immense cultural diversity, mass poverty, underdevelopment and of the special problems of integration of disparate regions. It was particularly challenging to do so in great heterogeneity considered thus far inhospitable to nation-building. As we will see later in the book, India took a cautious but steady approach to federalism, a multi-staged process accompanied by democracy to answer many questions of diversity, identity, autonomy and power-sharing at multiple levels, not always successful in every case of accommodation of identity, however, but overall holding on a country of sub-continental proportions, comparable to Europe, or the former Soviet Union. I argue in this book

that various asymmetric institutional arrangements in India, not simply limited to India's peripheral regions, have worked through territorial autonomy and commensurate power-sharing in offering the cementing bonds at many levels of the polity as well as financial equalization. In the existing knowledge on Indian federalism, federal asymmetry remains neglected. This study seeks to rectify the neglect by examining the constitutional, political and fiscal aspects of federal asymmetry broadly within the macro framework with some micro-level empirically based materials. It pays special attention to the institutional effectiveness of federal asymmetry in delivering governance, and a sense of fulfilment of identity. The subject of accommodation of diversity today occupies a central place in federalism and asymmetric federalism; a theoretical chapter will deal with the current debates on the so-called 'politics of identity and difference' and of recognition—usually not brought in the discourse of federalism and asymmetric federalism, on the one hand, and in contemporary political theory, on the other. The book follows a modified dynamic neo-institutional approach that takes into consideration institutions and institutional design, actors who work or do not work the institutions, and the context which facilitates or hinders institutional working. A critical comparative analysis of the relation between ethnic identity and asymmetric federalism, and the special problems of why a territorial solution to ethnic identity often does not work in India is offered towards the end of the book.

Asymmetry as such is not a desirable human value, but in federalism it has proved very functional and effective. Asymmetric federalism refers to a system of unequal status and powers of some federal units and subunits designed to meet some special socio-cultural, historical and economic needs of certain people living in peripheral areas of the federation. It refers also to special institutional arrangements for meeting problems that arise from asymmetric size, strength and resource bases of certain federal units, which may be *de jure* and *de facto*, and or *de facto* and then made *de jure*. Federal asymmetry, in other words, is a fact of life in most federations, and it has called for fiscal equalization at many levels through formal and or informal practices. The so-called federal success in a country like Switzerland, for example, has been made possible by many pragmatic measures to accommodate asymmetry of many kinds and at many levels (Dufflon 2007). Any understanding of asymmetric federalism would involve inevitably some prior understanding of what federalism is. After all, asymmetric federalism is unintelligible except for placing it

within an overall federal framework. Asymmetric federalism does not and cannot have a separate existence apart from federalism per se. This has a special theoretical significance too in the sense that the special circumstances, or complex cultural diversity, that have called for asymmetric institutional arrangements within federations remain proof against the historical processes of homogenization undertaken in the days of building classical nation-states in the West and elsewhere too. As I have pointed out elsewhere (Bhattacharyya 2001), when in neighbouring Germany, France and Italy nation-states were being built around the principle of homogeneity, and uniformity, the Swiss case for federalism was something of a great exception in having taken a more positive approach to cultural diversity in order to maintain and protect diversity. In Switzerland, diversity and federalism were, as if, two sides of the same coin. Apparently, the Swiss case might not be a good starting example: a very small country of some 8.7 million (2020) people having 26 Canton and half-Cantons (21 + 5) and about 2880 municipalities each with its distinctive identity, and provided with a government and autonomy would dismiss any grounds for asymmetry. But on a closer understanding (Dufflon 2007), Swiss federalism is very asymmetric in size and complexion, and the large scale equalization, financially speaking, has meant that this federation would not simply work without asymmetric institutions and practices.

In the current discourse on comparative federalism, globally speaking, both federalism and asymmetric federalism have been conjoined to meeting the diverse needs, i.e. the needs for identity and territorial autonomy at many levels of the compound, federal polity.⁴ The central motive behind the formation of classical federations was ‘union’, as a kind of defensive alliance against external aggression. In the post-colonial federations, the motive has been ‘uniting’ (read ‘unity and integrity’ in the case of India) diverse people, ethno-regional, ethno-linguistic and tribal. However, lately, in the West the existing state institutions in unitary systems were revised in order to offer space for the accommodation of cultural diversity. Even in countries not formally federal, special arrangements have been made to offer territorial autonomy to ethno-regional communities. This has happened in 2018 in the Philippines (Bhattacharyya 2019b: 191).

A REVISED TEMPLATE OF FEDERATION

Long back Watts (1966: 353) wrote:

Federal systems are no panacea, but in many developing countries they may be necessary as the only way of combining, through representative institutions, the benefits of both unity and diversity. Experience has shown that federations, both old and new, have been difficult to govern. But then, that is why they are federations.

The above passage sums up the basic message of why a diverse country needs a federal form of government, and also not lament that such governments are not easy. We may add from Wheare (1953) that federal governments are ‘so complicated and controversial’. Following Wheare again federation is to be seen as a political modernity of a special kind which means it is an ‘association of States’ (Wheare 1953: 51) that a deliberate construction by a compact agreed upon not by the individual citizens but by the pre-existing States. Here Wheare had in mind of course the classical federations; the post-colonial and post-Soviet federations have had different trajectories in which case a written Constitution or some other kinds of agreements and treaties are not necessarily valuable. In some cases, such as India, a federation has been built from above by disaggregating a once centralized colonial state, and also by a lot of adjustment and re-adjustment of territories by the political pressures from below. Such initial conceptual issues have been dealt with adequately in the existing knowledge.

The terms ‘federalism’ and ‘federation’ are often used interchangeably. The Swiss still retain their original term ‘Conferatio Helvetica’ (CH for short) although they transformed their system into a federation in 1848. There are other species too (Watts 2008: 10–17). But there is a subtle but substantial difference between the two. On the basis of the classic statements on the subject (e.g. Wheare 1953; Watts 1966, 2008; Elazar 1987; Burgess 2006), the term ‘federalism’ is to be understood, as a normative category, a political principle that advocates for a combination of shared rule and self-rule—the former for the national purposes, and the latter for regional ones. The same is understood to be a compound polity thus constituted for unity and diversity, for ‘accommodating, preserving and promoting distinctive identities within a larger political union (Watts 2008: 8). The epithet ‘shared rule’ and ‘self-rule’ is associated with the

name of Daniel Elazar (1987), and has since been much in use in federal discourse. There is a need for clarification of what they refer to. Watts (2008) argued that how this ‘combination’ of two types of rule is made and worked out depends on the particular context. He also forewarned that if this combination is not most appropriate, federalism then fails, often resulting in disintegration of the whole polity. There is also no one form of shared rule by meaning the regions’ participation in the national level policy making; nor is there one standard of regional participation in national level policymaking. This is precisely where the area of federal asymmetry, structurally speaking, comes in. In any case, a federal rule, or rather two or more types of rule, is rather complex, for federal governance is difficult, but an ethnically diverse country can hardly avoid it; if it does so it does it only at its own peril. A multi-tiered federalism is today accepted as a norm, sometimes expressed as ‘multi-level governance’, not there is still a subtle difference between the two. One could speak of multi-level governance in unitary systems of states too. The recognition of a third tier below the federal units, if constitutionally so guaranteed is certainly a part of the federal system of the countries concerned. The extent of participation of the regions in national level policymaking depends on how the federation is built—from below or from the top. In the case of the latter, the federal second chamber is not usually a house of the States with equal representation. Even in cases where a federation was a result of a compact among pre-existing states, the principle of equality of representation is not always followed. For example, in Switzerland, the half-Cantons have half the share of the full Cantons in the number of representatives sent to the federal second chamber.

While the issue of equal or unequal representation in the federal second chamber remains unsettled, there is very little critical reflection on the nature and extent of self-rule. Is self-rule enough shared rule? Does it ensure the representation of different communities in a multi-ethnic context? I raised this issue elsewhere (Bhattacharyya 2019a) with special reference to India’s North-East where achievement of statehood on the basis of tribal ethnicity has not been inclusive enough; on the contrary, this has produced exclusion of the newly created ethnic minorities. In many such cases, there is a provision for non-territorial representation by way of the nomination of the State Governor for sections not adequately represented. But that little assuages the feeling of being outnumbered in a parliamentary majoritarian model of democracy followed all over. Finally, federalism as a political principle informed the structural arrangements of