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REGIONAL VARIATIONS IN FEDERAL POWER-SHARING: SUB-STATE LEVEL PERSPECTIVE- Prerna Manocha¹**ABSTRACT**

The Indian Constitution embodies a federal system that strives to balance the nation's unity with its remarkable diversity. This research paper delves into the intricate landscape of federal asymmetries, explicitly focusing on Union Territories (UTs) as a critical example after examining the idea of Federalism, its approaches, and the evolution of the concept of asymmetrical federalism in the Indian context. India's federalism presents itself in a multifaceted manner, with asymmetries emerging at various levels. This study sheds light on the asymmetries within UTs, exploring their unique challenges and implications for India's federal aspirations. By examining the constitutional provisions and historical context surrounding UTs, this paper identifies several issues that can emerge due to these asymmetries. These issues encompass disparities in governance and autonomy among UTs, ambiguities in jurisdiction, potential centralisation of power, the need for recognition and preservation of local identities, administrative challenges, interstate and interterritorial relations, legislative gridlock, and demands for further asymmetry.

Recognising the significance of maintaining a cohesive federal structure while addressing these challenges, this paper proposes a set of recommendations. The suggested solutions include equalising the autonomy of UTs, clarifying roles and responsibilities, empowering local communities, decentralising authority, preserving cultural identity, promoting interterritorial cooperation, establishing conflict resolution mechanisms, strengthening UT institutions, encouraging public awareness and engagement, evolving constitutional tools, building political consensus, and instituting regular monitoring and evaluation.

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This research contributes to the ongoing dialogue on India's federalism by offering a comprehensive analysis of asymmetrical federalism within the unique context of Union Territories. By identifying the challenges and proposing viable solutions, it aims to foster a more inclusive and balanced approach to governance that preserves India's rich cultural diversity while ensuring a robust and cohesive federal structure.

Key Words: *Asymmetrical Federalism, Union Territories, Federalism, Salad Bowl Approach, Melting Pot Approach*

Federalism is a prominent feature of democratic governance, emphasizing dividing powers and responsibilities between a central government and constituent units, such as states or provinces. It serves as a crucial mechanism to balance the need for national unity with regional diversity. In the Indian context, federalism is enshrined in the Constitution, which delineates the distribution of authority and functions between the Union and the States. However, what makes India's federal system particularly intriguing is the presence of asymmetrical federalism, a nuanced and distinctive aspect of its federal structure.

Asymmetrical federalism acknowledges the varying degrees of autonomy and powers granted to different states or regions within the federal framework, recognising that India is a mosaic of diversity in terms of culture, language, history, and developmental needs. This dynamic concept of federalism allows for tailored solutions that cater to individual states' unique circumstances and aspirations, thereby contributing to the preservation of national unity and local diversity. In this paper, we delve into the complex interplay of federalism and asymmetrical federalism in India, exploring the historical evolution, constitutional provisions, and the impact of this system on Indian polity and society. If a comparative view is taken to understand the development of 'asymmetrical federalism', it would showcase that numerous federal systems worldwide have displayed asymmetrical tendencies relating to granting status and autonomy to their constituent units. These have been the result of variations among these units. In addition to Canada, one of the first countries to adopt this approach and India, significant examples provided by federations today are Belgium, Germany, Malaysia, and Spain.

Asymmetry among constituent units is not confined to federations. The European Union, which can be considered a ‘confederation’, with some features more typical of federations, has “incorporated elements of ‘variable geometry’ and integration at variable speeds”.²

The asymmetric characteristics of Indian federalism were born out of necessity. Unlike Canada, where their history played a significant role in shaping these characteristics, colonial rule was only one of the reasons why India adopted this approach. In the context of the Indian sub-continent, various challenges emerged in the age of post-colonialism, which triggered the systems to shape so that asymmetrical features were naturally formed out of necessity rather than mere creation.

Revelling in Diversity: The Imperative of India's Salad Bowl Approach

Various authors developed two significant approaches to define the nature of ‘federalism’ in a nation. The Salad Bowl and Melting Pot are metaphors used to describe different approaches to cultural and ethnic diversity within a federal or national framework, and they are often applied in the context of multicultural societies. Taking a comparative analysis of the United States and India, both are perfect examples of the Melting Pot Approach and the Salad Bowl Approach, respectively. Both approaches hold importance when seen in the context of the nations mentioned above.

i. The Melting Pot Approach:

The melting pot concept was popularised in the United States in the late 19th and early 20th centuries. The term is often associated with the play "The Melting Pot" by Israel Zangwill³, first performed in 1908. In this play, Zangwill envisioned the United States as a melting pot where people from various backgrounds would unite, assimilate into a single American culture, and form a new, unified identity. In the Melting Pot approach, diverse cultures and ethnicities are expected to incorporate into a single, homogenous culture. This metaphor implies that the various elements, like different ingredients in a pot, "melt" together to form a unified culture. In this assimilationist model, the goal is often to create a uniform national identity, sometimes at the expense of cultural diversity.

²Ronald L. Watts, *A Comparative Perspective on Asymmetrical Federalism*, 4 JOURNAL OF INSTITUTE OF INTERGOVERNMENTAL RELATIONS - ASYMMETRIC SERIES (2005)

³Israel Zangwill, *The Melting Pot* (Broadway Press) (2017)

This approach guarantees unity despite different ethnicities and cultural identities, a need of the hour for the thirteen colonies that created the United States of America. With their independence, they resolved to form a new identity and leave behind their European roots to let go of the oppression of the Kings they had left behind. However, fundamentally, the Indian experience is different from these colonies. When colonial rule began, India was already divided into various kingdoms and varied forms of nation-states. Therefore, the purpose of the Eve of Independence was to protect the identities rather than forming a singular identity.

ii. The Salad Bowl Approach:

The Salad Bowl approach, on the other hand, celebrates cultural diversity and sees it as a strength rather than a challenge. It envisions a society where different cultures coexist, maintaining their distinct identities like the ingredients in a salad. This approach respects and preserves the unique characteristics of various cultural and ethnic groups while promoting unity and cohesion through shared values and a sense of belonging to a larger whole. The rationale behind India adopting this approach can be attributed to various reasons.

First and foremost, India has incredible cultural and ethnic diversity. It is home to numerous languages, religions, and traditions. Embracing this diversity is not only a matter of policy but a reflection of the complex and rich tapestry of Indian society. Secondly, India's historical and social fabric has always been characterised by a mosaic of cultures. Unlike the United States, which has experienced significant waves of immigration and sought to create a unified national identity, India's diversity has ancient roots. Post-independence, the ideals the Indian Constitution resolved to recognise and promote were inclined towards protecting cultural minorities and certain linguistic groups, which required attention. The Constitution aimed to treat equals equally and promote the ideals of protective discrimination, which have, as a result, led to many features of asymmetrical federalism. On another note, if strictly practical considerations were noted, the vastness of the Indian geography and varying complexities within minute differences have also accommodated approaches that can balance differences. Strict uniformity, therefore, in such scenarios could have never served the purpose of uniting the Princely States and Presidencies left by the British under one nation.

In summary, India's adoption of the Salad Bowl approach to federalism is rooted in its historical, cultural, and constitutional foundations. It acknowledges the importance of preserving

and celebrating the country's rich diversity while promoting national unity and integration through shared values and principles.

Varying Levels of Asymmetric Federalism in India

Asymmetrical federalism in the Indian Constitution is primarily reflected in variations in the distribution of powers and special provisions granted to different states or regions. These asymmetries can be found at various levels in the Indian federal system and occur for various reasons discussed above.

Before the abrogation of Article 370 of the Indian Constitution in 2019, a significant case study existed for asymmetry in the Indian context. The former state of Jammu and Kashmir had a special status within the Indian Union, allowing it a significant degree of autonomy in various matters, including governance, citizenship, and property rights. This was a unique form of asymmetrical federalism, with Jammu and Kashmir having their constitution and separate laws. It also gave the State Legislature significant autonomy in the enforcement of laws. It made the process much more challenging for the Union Legislature to extend legislation to the State without ratifications and deliberations from the State Legislature. As noted above, colonial history did play a significant role in the creation of this provision. The Indian Constitution also recognises the unique needs and historical injustices tribal communities face. It provides for asymmetrical federalism by designating certain areas as Scheduled Areas and Scheduled Tribes to protect their distinct cultures, land rights, and self-governance through autonomous district councils and gram panchayats. Further, it includes provisions for special-status states such as Himachal Pradesh and Uttarakhand, which receive financial and administrative incentives to promote their development. These states have fiscal and administrative autonomy to a certain extent, demonstrating a form of asymmetry. Some states are given the flexibility to conduct official business in their regional languages, preserving linguistic diversity. Several northeastern states and some states in southern India have special provisions under Article 371. These provisions grant autonomy to certain states and regions in land and resources, educational institutions, and local governance.

It is also important to note that in addition to these, India's policy on Special Economic Zones allows for specific regions to have fiscal and administrative advantages, promoting economic growth and development in those areas.

A unique kind of asymmetry exists in India, unlike any other system of governance. They are described as 'Sub-state' Level Asymmetry, characterised by the creation of 'Union Territories', distinct federal units that do not share characteristics with those of States⁴.

Asymmetric Federalism in Union Territories of India

Union Territories (UTs) in India exhibit various federalism asymmetries regarding their governance and administration, as specified in the Indian Constitution. The creation of Union Territories, the reasons behind their establishment, and their significance vary depending on each UT's specific circumstances and needs. Some critical fundamental asymmetries which are visible in the Constitution are elucidated below -

Firstly, not all Union Territories in India can be categorised into one type. Within this group exists the varying nature of UTs. There are UTs with a legislature. These UTs have their legislative assemblies and governments, similar to states. Examples include Delhi and Puducherry. Some exist without a legislature. These UTs are administered directly by the President of India through an appointed Administrator. They do not have their legislatures. Examples include Chandigarh Daman and Diu. In another distinct case, the President can establish a legislature for certain UTs, granting them some degree of self-governance. An example is Jammu and Kashmir before its reorganisation in 2019.

Secondly, as highlighted above, not all have been created for similar reasons. The creation of Union Territories can be attributed to various historical, geographical, and administrative reasons. Their significance lies in the following aspects:

- a. **Administrative Efficiency:** Some Union Territories were formed to facilitate more effective administration, especially in regions with a limited population or specific strategic importance. These UTs are often directly governed by the central government, which streamlines administrative processes.
- b. **Special Circumstances:** In cases like Delhi and Puducherry, Union Territories with legislatures were created to address unique circumstances. Delhi needed a special

⁴Rekha Saxena, *Asymmetrical federalism in India: Promoting secession or accommodating diversity?* REVISITING UNITY AND DIVERSITY IN FEDERAL COUNTRIES, 362–376 (2018)

status as the capital territory to accommodate the national government. Puducherry was formed by merging former French colonies, and the UT status allowed for flexibility in governance.

- c. **Cultural and Linguistic Considerations:** Establishing Union Territories in certain regions, such as the Andaman and Nicobar Islands or Lakshadweep, considers the local populations' distinct cultural and linguistic characteristics.
- d. **Political and Strategic Significance:** Some Union Territories, like Jammu and Kashmir, have had historical political significance. Before its reorganisation, Jammu and Kashmir had a unique autonomous status, reflecting its geopolitical importance.
- e. **Balancing Local Autonomy with Central Control:** Union Territories balance local autonomy and central control. Those with legislatures have their governments and can legislate on specific subjects, while those without legislatures are governed directly by the central government. This flexibility allows for tailored governance based on the needs of each Union Territory.
- f. **Change in Status:** Union Territories can evolve. For example, Delhi, which initially did not have its legislature, was later granted the status of a UT with a legislature. This reflects the adaptability of India's federal system to changing circumstances and the recognition of the unique requirements of each territory.

In this context, if one were to only opine on the status of Delhi and compare it with Puducherry, there would be a significant difference. Representation itself differs for these UTs according to their needs and significance. Delhi, for example, elects seven representatives to the Lok Sabha, whereas Puducherry has been granted a single seat. These variations may seem discriminatory if not taken in the context of the importance of NCT or National Capital Territory, which requires more representation because of its political significance and cultural diversities.

Judicial Interpretations of Federal Asymmetry in the Indian Constitution

The Indian Judiciary has commented on federal asymmetries in various cases throughout history. Recently, the abrogation of Article 370 led to multiple opinions from the Judiciary on the exclusive special provisions that display federal asymmetries and grant special status to some national units. The judicial interpretations of federal asymmetry in the Indian Constitution have significantly shaped the relationship between the central government and various states or

regions. The Indian judiciary, particularly the Supreme Court, has had to address and provide guidance on special provisions, autonomy, and asymmetrical federalism in the Indian federal system.

In the case of **State Bank of India v. Santosh Gupta**⁵, the court held that Article 370 was not a temporary provision and was not abrogated by the mere passage of time. It emphasised that any changes to this special status required the concurrence of the State's Constituent Assembly as stated in Article 370(3). This provision will remain permanent until removed or abrogated according to the procedure. The reality, however, was very different as the requirement was abolished to remove the special status of Jammu and Kashmir from the Indian Constitution.

Another perspective exists in Article 371 of the Indian Constitution, which provides special provisions favouring various states. The Supreme Court has often been called upon to interpret the extent of these special provisions and the powers of the conditions under Article 371. In the case of **Rameshwar Prasad v. Union of India**⁶, the court upheld Nagaland's special status under Article 371A, emphasising the state's legislative powers over customary law and procedure. In another protective measure, in the case of the **Government of NCT of Delhi v. Union of India**⁷, the Supreme Court clarified the powers and responsibilities of the Delhi government, reaffirming its special status under Article 239AA.

These judicial interpretations reflect the evolving nature of asymmetrical federalism in India and the ongoing efforts to balance regional autonomy with national integration. The judiciary's role in clarifying and upholding the constitutional provisions related to federal asymmetry is crucial in ensuring fair and just implementation of these provisions and addressing the unique needs and circumstances of different states and regions within the Indian national system.

The Underlying Issues of Asymmetrical Federalism in the Sub-State Level Context:

Asymmetrical federalism, particularly within Union Territories (UTs), can give rise to several underlying issues and challenges for India's federal aspirations. While asymmetry can be

⁵Civil Appeal No. 12237-12238 of 2016

⁶Writ Petition (Civil) 257 of 2005

⁷(2018) 8 SCC 501; C. A. No. 2357 of 2017; D. No. 29357-2016

a valuable tool for accommodating regional diversity and unique circumstances, it also presents specific concerns.

Firstly, the presence of different types of UTs with varying levels of autonomy can lead to inequality among these territories. UTs with legislatures, like Delhi and Puducherry, have more self-governance and legislative powers, while the central government directly administers those without legislatures. This inequality can create disparities in the quality of governance and access to resources, potentially fostering feelings of discrimination and unfair treatment.

Secondly, the existence of various UTs with differing degrees of self-governance can result in administrative challenges and confusion regarding jurisdiction. Legal and administrative responsibilities may vary, and such ambiguities can hinder efficient governance, creating the need for clarity in roles and responsibilities.

Thirdly, UTs directly governed by the President of India may be perceived as more centralised in decision-making and governance. This can lead to concerns about the concentration of power in the central government, potentially eroding the principles of federalism that aim for a balance of power between the centre and the states or territories.

Fourthly, Asymmetrical federalism can sometimes raise questions about preserving the unique cultural, linguistic, and regional identities of different UTs. The desire for greater autonomy and recognition of local aspirations may give rise to demands for further concessions, which can challenge the overall unity of the nation.

Lastly, managing a complex asymmetry system requires constant jurisprudential and legislative attention. Adjudicating disputes and evolving legal and constitutional provisions to accommodate the needs and demands of various UTs can be a complex and time-consuming process.

It must also be addressed that asymmetry among UTs may impact relations between states, UTs, and the central government. Managing interterritorial disputes or harmonising policies that affect multiple territories can be challenging, potentially leading to friction in the federal structure. In UTs with legislatures, differences in political ideologies, legislative priorities, and governing philosophies can lead to legislative gridlock. This can hinder the efficient functioning of these legislatures and impact the delivery of essential services and governance. Granting asymmetrical powers to certain UTs may trigger demands for similar concessions from other regions. This can create a situation where more and more areas seek

unique status, potentially complicating the federal structure and posing administrative challenges.

Viable Solutions to Address Disparities in the Treatment of Union Territories:

In the context of the issues mentioned earlier, the following solutions and suggestions are recommended to achieve a balanced approach to viewing these asymmetries and resolving potential conflicts and disparities. It is important to note that addressing the problems arising from asymmetrical federalism, particularly within Union Territories (UTs), requires a combination of legal, administrative, and political approaches;

- i. **Equalization of Autonomy:** To reduce inequality among UTs, some level of standardisation must be achieved in autonomy and self-governance granted to each UT. In each scenario, the Centre's control must still be maintained in equal parts.
- ii. **Clarity in Roles and Responsibilities:** Defining and clarifying the administrative and legislative responsibilities of UTs, particularly those with unique status. For example, a clear distinction between Delhi and all other UTs and the significance of this division must be communicated.
- iii. **Local Empowerment:** Despite their special status, the Union Territories mustn't be merged with the States near them to avoid administrative hassles. Local communities must be employed and encouraged to maintain the UT's distinct identity, especially in the case of Ladakh and Puducherry.
- iv. **Conflict Resolution Mechanisms:** Establishing effective dispute resolution mechanisms to address conflicts between various territories through judicial or administrative means can assist UTs in resolving their issues and be heard much more. This would include capacity building, training, and promoting transparency and accountability.
- v. **Evolve Constitutional Mechanisms:** Taking lessons from the case of Jammu and Kashmir, the Constitutional provisions have to move hand in hand with the solutions. Periodic amendments and reviews of the requirements have to be made. This is vital in North East States' case, especially in the context of the Manipur Riots.

After analysing various aspects, it can be concluded that by implementing the proposed solutions, India can achieve a harmonious balance between preserving its diverse cultural and regional heritage and maintaining a strong, cohesive federal structure that promotes national unity and effective governance. It should be stated that these solutions must be tailored to meet the unique circumstances and requirements of each Union Territory to ensure their effectiveness in successfully tackling the challenges arising from asymmetrical federalism. By doing so, the Union Territories will be able to effectively address these challenges and ensure that the country's diversity is celebrated while maintaining a strong sense of national unity.

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