



INDIA: A FORM OF ASYMMETRICAL FEDERATION

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ABSTRACT

Federalism, a form of political system, refers to the complementary arrangement of government where a central government shares the power with regional or state governments. The federal structure of government is noticed all around the world with some notable characteristic differences. The federal structure could be symmetric or asymmetric.

India has a federal structure. Part XI of the Indian Constitution classifies the division of powers between the union and the state governments of India. Through the paper, we shall answer the question if India, a Union of States, is an asymmetric federalism. We shall classify political asymmetry and constitutional asymmetry. For a critical assessment and to answer the question, we shall focus on the following objectives-

- Analyzing Tillin's¹ contentions vis-à-vis asymmetrical nature of the Indian federation.
- Analyzing differential rights given to North-eastern states in India, especially Nagaland and Mizoram, and Jammu and Kashmir vis-à-vis other states in the Indian federation.
- Classifying the difference between Nagaland and Mizoram.

After evaluation, there is a clear conclusion that federal structure of India is asymmetrical in nature.

INTRODUCTION

Political asymmetry (de-facto asymmetry),² a feature of every federation, exists because of the geographical and demographic sizes of the units³ or states.⁴ It is often known as universal asymmetry. Representation in Rajya Sabha, for instance, is on the basis of its population.⁵ Each state has its seat in the Rajya Sabha or Council of States based on its population and not any other ground.⁶ Uttar Pradesh, hence, has 31 seats in the Rajya Sabha, whereas Goa, Puducherry, and some northeastern states have only one seat each.⁷ Similarly, every other state has its number of seats on the basis of its population. Thus, there exists political asymmetry in Indian federation. However,

¹ Tillin, L. (2016). Asymmetric federalism. In S. Choudhry, M. Khosla, & P. B. Mehta (Eds.), *The Oxford handbook of the Indian constitution* (pp. 540-558). Oxford University Press.

² Tillin, L. (2007). Unity in diversity? Asymmetry in Indian federalism. *Publius*, 37(1), 45-67.

³ Watts, R. L. (1999). The theoretical and practical implications of asymmetric federalism. In R. Agranoff (Ed.), *Accommodating diversity: asymmetry in federal states* (pp. 24-42). Baden-Baden, Germany: Nomos Verlagsgesellschaft, also see Watts, R.L. (2005). A Comparative perspective on asymmetry in federations. Kingston, Canada: Institute of Intergovernmental Relations.

⁴ Negash, B. (2014, April). *Federation among unequals; Implications and moderation of political asymmetry in Ethiopia's federal system* (Master's thesis, Addis Ababa University, Ethiopia, Africa).

⁵ *Members of Rajya Sabha (State Wise List)*. (n.d.). Retrieved from <http://164.100.47.5/Newmembers/memberstatewise.aspx#content>

⁶ The Constitution of India. (1949). arts. 4(1) & 80(2), sch. 4.

⁷ *Terms of the Houses*. (n.d.). Retrieved from <https://eci.gov.in/elections/term-of-houses/>.



there is a difference between constitutional asymmetry and political asymmetry.⁸ Constitutional asymmetry (de-jure asymmetry) means asymmetric federalism.⁹ Asymmetric federalism connotes the existence of nation granting differential rights¹⁰ or special status¹¹ or separate deals with regards to policy making to some of its states or federal units or sub-units in order to ensure that recognition is given to certain distinct, territorially concentrated ethnic or national groups.¹² In simpler terms, it means an unequal division of powers between states.¹³ These asymmetrical devices work, within a federal setup, to accommodate diverse population¹⁴ and help citizens achieve a degree of self-determination.¹⁵ India has a federal constitution,¹⁶ along with asymmetric provisions.¹⁷ It is evident from the provisions implying granting of autonomy to resolve ethnic conflict to north-eastern Indian states and Jammu and Kashmir

(hereinafter referred to as Kashmir).¹⁸ Following part of the paper elaborates on the subject. Firstly, paper will introduce the existence of asymmetric provisions in the north-eastern states and Kashmir. Secondly, we shall analyze Tillin's contentions on the asymmetry of Indian federation.

DECONSTRUCTING NORTH-EASTERN STATES' ASYMMETRY VIS-À-VIS PART XXI OF THE CONSTITUTION

North-eastern states (Assam, Manipur, Nagaland, Mizoram Sikkim and Arunachal Pradesh), which cover more than half of the provisions mentioned under Article 371A-371H,¹⁹ have wide division of ethnic communities, highest proportion of scheduled tribes and very scarce resources.²⁰ In fact, the majority of population of these states come under the category of scheduled

⁸ Rao, M. G., & Singh, N. (2004). Asymmetric Federalism in India. UC Santa Cruz International Economics Working Paper No. 04-08. Retrieved from <https://ssrn.com/abstract=537782>

⁹ Hausing, K. K. (2014). Asymmetric federalism and the question of democratic justice in northeast India. *India Review*, 13(2), 87-111.

¹⁰ Tillin, L. (2016). Asymmetric federalism. In S. Choudhry, M. Khosla, & P. B. Mehta (Eds.), *The Oxford handbook of the Indian constitution* (pp. 540-558). Oxford University Press.

¹¹ Saxena, R. (2012). Is India a case of asymmetrical federalism? *Economic and Political Weekly*, 47(2), 70-71, 73-75.

¹² Tillin, L. (2016). Asymmetric federalism. In S. Choudhry, M. Khosla, & P. B. Mehta (Eds.), *The Oxford handbook of the Indian constitution* (pp. 540-558). Oxford University Press.

¹³ Baruah, P., & Rouleau, N. M. (2020). Democracy, representation, and self-rule in the Indian Constitution. *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 44(2), 177-195.

¹⁴ Tillin, L. (2016). Asymmetric Federalism. In S. Choudhry, M. Khosla, & P. B. Mehta (Eds.), *The*

Oxford Handbook of the Indian Constitution (pp. 540-558). Oxford University Press.

¹⁵ Burgess, M. (2006). *Comparitive federalism: Theory and practice*, Abingdon, Oxfordshire: Routledge.

¹⁶ Srikrishna, B. (2012). Beyond federalism. *India International Centre Quarterly*, 38(3/4), 386-407.

¹⁷ Stepan, A. (1999). Federalism and democracy: Beyond the U.S. model. *Journal of Democracy*, 10(4), 19-34;

see also Venkataramanan, K. (2019, August 11). Explained: India's asymmetric federalism. *The Hindu*, Retrieved from <https://www.thehindu.com/news/national/the-forms-of-federalism-in-india/article28977671.ece>

¹⁸ Burgess, M. (2006). *Comparitive federalism: Theory and practice*, Abingdon, Oxfordshire: Routledge.

¹⁹ The Constitution of India. (1949). pt. XXI.

²⁰ Dasgupta, J. (1997). Community, authenticity, and autonomy: Insurgence and institutional development in India's northeast. *The Journal of Asian Studies*, 56(2), 345-370.



tribes(for instance, 86.1%, 86.5% and 94.4% of population in Meghalaya, Nagaland And Mizoram respectively is scheduled tribes).²¹ These provisions came as a resolution to ethnic conflicts in the northeastern region and as a means to give some autonomy, special rights, and thus, recognition to their distinct culture and tribal communities which forms majority of the population. These special rights are not given to all the states but the states with some conditions such as hilly terrain, existence of different ethnic groups, tribal population, low population density, economic problems.²² These rights and provisions granting special status²³ to certain states are discriminatory, though positive in nature, as they don't cover the states without these above-mentioned conditions or which are not there in Article 371-371H of the Constitution.²⁴ For instance, Article 371A²⁵ has a provision that says the no act or statute made by parliament would be applicable to the state of Nagaland prior to the consent of their legislature if it is related to Naga customary law and procedure or religious or social practices, administration of civil and criminal justice involving decisions related to Naga customary law; whereas there are no such provisions in the constitution for any other state except Mizoram.²⁶ Similarly, the legislative assemblies of both the states (Nagaland and Mizoram) can prevent any

legislation and their application if they are related to the ownership and transfer of land. Other states in Indian federation do not have such right to prevent any application of law with respect to the ownership of land. However, the provision given under Article 371A²⁷ for Nagaland gives an additional power, in comparison with Mizoram, to the former state.

It extends the right, to prevent the application of any law concerned with 'land and its resources', to Nagaland's Legislative Assemblies. 'Land and its resources' provision is not extended to Mizoram; Article 371G²⁸ provides the legislative assemblies of Mizoram to prevent the application of legislation concerned with 'Land' only.²⁹ Thus, a provision giving differential status and more autonomy to these states than other states in the nation implies de-jure asymmetry or constitutional asymmetry.

DECONSTRUCTING JAMMU & KASHMIR'S ASYMMETRY VIS-À-VIS ARTICLE 370 OF THE INDIAN CONSTITUTION

Article 370³⁰ granted special status to Kashmir.³¹ Under the protection of special status, Kashmir was allowed to have its own

²¹ Ministry of Tribal Affairs India. (2018). *Socio-economic activities for tribal development: Annual Report 2017-2018*. Retrieved from <https://tribal.nic.in/writereaddata/AnnualReport/AR2017-18.pdf>

²² Arora, B., Kailash, K. K., Saxena, R., & Hausing, K. S. (2013). Indian federalism. In K. C. Suri, & A. Vanaik, *ICCSR research surveys and explorations-political science: Indian democracy* (Vol. 2, pp. 100-160). New Delhi, India : Oxford University Press.

²³ Tillin, L. (2007). Unity in diversity? Asymmetry in Indian federalism. *Publius*, 37(1), 45-67.

²⁴ The Constitution of India. (1949).

²⁵ The Constitution of India. (1949).

²⁶ The Constitution of India. (1949). art. 371G.

²⁷ The Constitution of India. (1949).

²⁸ The Constitution of India. (1949).

²⁹ Hausing, K. K. (2014). Asymmetric federalism and the question of democratic justice in northeast India. *India Review*, 13(2), 87-111.

³⁰ The Constitution of India. (1949).

³¹ Article 370: India strips disputed Kashmir of special status. (2019, August 5). *Bbc*. Retrieved from <https://www.bbc.com/news/world-asia-india-49231619>



constitution,³² define the status of ‘permanent residents’ according to its own convenience and had the right to prevent outsiders from holding the ownership of any property within its circumference.³³ Also, the article provided immunity to the state (currently- Union Territory, since 31st October 2019) from following any law applicable to the rest of India and allowed to have its own penal and criminal procedure code. On 5th August 2019, the government modified Article 370³⁴ and scrapped the special status granted to the state.³⁵ The Constitution (APPLICATION TO JAMMU AND KASHMIR) ORDER, 2019 superseded Constitution (Application to Jammu and Kashmir) Order, 1954.³⁶ It means that Kashmir no longer has the special status; and the rights, immunity and privileges, enjoyed due to the special status, ceased to exist in effect.³⁷

**“LOUISE TILLIN, THOUGH
CONTENDS, INDIA IS AN
ASSYMETRIC FEDERALISM”**

Tillin objects that differential rights granted to North-eastern states and Kashmir violates

basic principles of Asymmetric federalism and are transient in nature. Following part of the paper evaluates and analyses various contentions raised by Tillin on the asymmetry of Indian federation.

Tillin argues and contradicts that the constitutional rights given to all the states with respect to the language were same and there were no prerogatives given to some states which is the basic principle of asymmetric federalism.³⁸ I would like to contend his point on the basis of special status given to Nagaland and Assam. Firstly, there were same rights given to all the states, but there were certain special provisions which were specific to some states as mentioned above. Granting differential rights to Nagaland and Mizoram from other states to protect their customs and regulate the ownership of their land amounts to asymmetry. Secondly, Nagaland and Mizoram are granted different status, with respect to land provision, from each other even when there is similar situation with minute difference implying that our Parliament has intended to follow asymmetry with precision. Though there was a beginning of conflict by Mizo National Front led by

³² Srivastava, S. (2019, August 5) India revokes special status for Kashmir. Here’s what it means. *Cnbc*. Retrieved from <https://www.cnbc.com/2019/08/05/article-370-what-is-happening-in-kashmir-india-revokes-special-status.html>.

³³ Govt moves to scrap Article 370: All you need to know. (2020, June 9). *Hindustantimes*. Retrieved from <https://www.hindustantimes.com/india-news/tension-in-kashmir-over-article-370-and-article-35a-all-you-need-to-know/story-xOLrg9cF363iHsk1Mo3AzI.html>.

³⁴ The Constitution of India. (1949).

³⁵ Deka K. (2019, August 6). How Kashmir changed on August 5. *India Today*. Retrieved from <https://www.indiatoday.in/india-today->

[insight/story/how-kashmir-changed-on-august-5-1577706-2019-08-06](https://www.indiatoday.in/india-today-insight/story/how-kashmir-changed-on-august-5-1577706-2019-08-06).

³⁶ Indian constitution to apply in Jammu and Kashmir: Presidential order. (2019, August 5). *The Economic Times*. Retrieved from <https://economictimes.indiatimes.com/news/politics-and-nation/indian-constitution-to-apply-in-jammu-and-kashmir-president-order/articleshow/70533102.cms?from=mdr>.

³⁷ Gentleman J., Raj S., Schultz K., & Kumar H. (2019, August 5). India revokes Kashmir’s special status, raising fears of unrest. *The New York Times*. Retrieved from <https://www.nytimes.com/2019/08/05/world/asia/india-pakistan-kashmir-jammu.html>.

³⁸ Tillin, L. (2007). Unity in diversity? Asymmetry in Indian federalism. *Publius*, 37(1), 45-67.



Laldenga even after introducing an asymmetrical status for the state for Mizoram in the state, it was overcome by the peace accord which is often seen as innovating offer of extreme asymmetric federalism as it granted special and more cultural autonomy to the Mizoram.³⁹ The peace treaty due to the granting of differential status and more autonomy implies that India could be seen as asymmetric federalism even according to the normative justification.⁴⁰

Next comes the status of Kashmir. Though Kashmir has ceased to operate under special status,⁴¹ it is an example of asymmetric provision which was granted special rights. Tillin argues that provision is not asymmetrical because of its transient nature, and it was due to the UN intervention and unresolved armed dispute with Pakistan.⁴² Article 370 granting differential status was transient and it was revoked recently, I agree. However, Tillin didn't make any contention related to north-eastern states even though they are temporary.⁴³ It doesn't change the fact that they failed to

deliver the purpose for which they were made. He mentioned that the asymmetrical status did not stem from recognition that its ethnic or religious distinctiveness constituted a basis for a higher degree of self-government than other Indian states, even though its majority Muslim population was a major reason for the dispute in and over the state.⁴⁴ Firstly, intention doesn't matter as it was accorded with differential status and autonomy nonetheless.⁴⁵ Granting special status to Kashmir was not done directly to accommodate the diverse population. It was given special status due to the UN intervention and unresolved armed dispute with Pakistan, but it does not change the fact that special status was given to the state. Secondly, I would like to put the point that provisions came in force because of the dispute. The dispute was because of majority Muslim population. To prevent any further dispute, create peace and wait for the integration it into the dispute, it was introduced into the constitution as mentioned clearly by N. Gopalaswami Ayyangar.⁴⁶

³⁹ Stepan, A., Linz, J. J., & Yadav, Y. (2011). *Drafting state-nations: India and other multinational democracies*. Baltimore MD, The USA: Johns Hopkins University Press .

⁴⁰ Bauböck, R. (2018). Democratic Inclusion: A pluralist theory of citizenship. In R. Bauböck (Ed.), *Democratic inclusion* (pp. 3-102). Manchester, England: Manchester University Press.

“Normative justification says that asymmetric federalism in a democracy should consider differences and make conditions which helps in maintaining multiple identities with peace, multiple identities should be seen as complimentary and there should be equality provided to all citizens even if is through positive discrimination. The object of the normative justification is to allow asymmetric provisions for promoting equality among the citizens and regions.

⁴¹ Article 370 and 35(A) revoked: How It would change the face of Kashmir. (2019, August 15). *The Economic Times*. Retrieved from <https://economictimes.indiatimes.com/news/politics->

[and-nation/article-370-and-35a-revoked-how-it-would-change-the-face-of-kashmir/articleshow/70531959.cms](https://economictimes.indiatimes.com/news/politics-and-nation/article-370-and-35a-revoked-how-it-would-change-the-face-of-kashmir/articleshow/70531959.cms)

⁴² Swenden, W. (2016). Centre-state bargaining and territorial accommodation: Evidence from India. *Swiss Political Science Review*, 22(4), 491-515.

⁴³The Constitution of India. (1949). pt. XXI.

“Part XXI reads temporary, transitional and special provisions. There is a use of word ‘and’ that implies that all the provisions are temporary, transitional and special and not just temporary or special, transitional or temporary.”

⁴⁴ Tillin, L. (2007). Unity in diversity? Asymmetry in Indian federalism. *Publius*, 37(1), 45-67.

⁴⁵ Saxena, R. (2012). Is India a case of asymmetrical federalism? *Economic and Political Weekly* , 47(2), 70-71, 73-75.

⁴⁶ Saxena, R. (2012). Is India a case of asymmetrical federalism? *Economic and Political Weekly* , 47(2), 70-71, 73-75.



Hence, ethnic and religious distinctiveness was considered, and the distinct majority was benefitted as they had separate constitution and property rights just for the people of Kashmir.

CONCLUSION

Hence, India, a Union of States, is an asymmetric federalism. Several provisions made in the constitution with regard to granting of additional powers to north-eastern regions and special status to Jammu and Kashmir proves the point. Further, different provision with respect to land and its resources are made differently for Nagaland and Mizoram, under the Indian Constitution, proves that India tried to keep asymmetry with respect to provisions under the precision application wherever required.

Louise Tillin contended that no prerogative was given to some states and formation of every state was on the linguistic ground, which does not imply any differential right granted to state. However, granting of differential status to north-eastern states and special status accord to Kashmir proves the contrary. Louise further contended that granting of differential rights to the states for a temporary period reflects that constitution makers did not intend to keep Indian federation asymmetrical in nature. In my opinion, intention does not matter in this dispute and mere granting of differential rights to different states amount to asymmetry. Moreover, settlement of dispute in Kashmir due to Muslim population and according peace in Mizoram to prevent the conflict was done by providing asymmetrical provision, and thus, India is an asymmetrical federalism in true sense as it satisfies normative justification too. Tillin objected that there were disputes in Kashmir though,

special status was extended due to the UN intervention. According to the facts, the UN intervened to settle down the dispute which arose because of Muslim population. Asymmetric provisions were used as a tool to attain peace.

I believe that intention to extend asymmetric tools to settle down disputes and attain peace by providing differential rights and special status to some states is enough intention, mere possession of this status with some states, and successful results of this tool is enough to conclude that India is an asymmetric federalism.

