

Negotiated Autonomies: Understanding Article 370 and the Scheduled Areas Framework

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Abstract: *This paper focuses on the constitutional design of India and to discuss the process of negotiated autonomies in regions with historical, cultural, and political identities in India. To demonstrate the role that asymmetry played as a state-making mechanism, conflict management, and safeguarding vulnerable populations, the paper uses a comparative analysis of Article 370 and the Fifth and Sixth Schedules. It follows the shift of the former accommodative model of federalism to a more integrationist one, particularly following the 2019 reorganization of Jammu & Kashmir. The paper suggests that asymmetrical federalism is still at the heart of the pluralistic government in India, despite a profound change in its outlines by examining constitutional debate, judicial developments, and the ethnographic circumstances of Scheduled Areas.*

Keywords: Asymmetrical federalism, Article 370, Fifth Schedule, Sixth Schedule.

INTRODUCTION

The constitutional structure of India is a big break as compared to the classical federal principles as propounded by theorists like A.V. Dicey and K.C. Wheare, who conceived federations as made up of constituent units that shared equal power and enjoyed a co-ordinate status. India, by contrast, is a model that Granville Austin termed as an original experiment in what he terms as co-operative federalism, and which functions in what scholars have termed as a holding-together structure, opposed to a coming-together federation (Austin 1999). Contrary to other systems like that of the United States, where formerly sovereign states willingly surrendered their power to form a federal union, the Indian federation is an unbreakable union of which states are in their turn constitutional constructions, which can be changed or restructured by Parliament. The peculiar constitutional reasoning required asymmetrical federal arrangements, according to which various states or regions possess unequal competences and differentiated relations with the Centre and are important means of political integration and of conflict management (Tillin 2013).

Researchers like Louise Tillin observe that the territorial arrangement of India is dynamic and constantly being redefined by the linguistic, cultural and ethnic forces and that flexible institutional structures are thus essential in accommodating the different regional identities (Tillin 2013). Asymmetry is thus not accidental or a temporary aspect but a deliberate constitutional policy of stabilizing a fragmented and plural polity. Similar arguments are also made by Rehka Saxena who argues that centrifugal tendencies have been historically curbed by differentiated provisions, which were most visible in the Northeast and earlier in Jammu and Kashmir, and which have served to avoid the disintegration of the Union (Saxena 2011). However, this stabilizing structure is finding growing challenges in the current day, with centralization of political impulse and the changing judicial meanings seeming to reduce the constitutional space in which asymmetry and regional autonomy can take place.

UNITARIAN BIAS AND FEDERAL NECESSITY OF CONSTITUENT ASSEMBLY

The Constituent Assembly Debates also show a profound and long-running contradiction between two competing imperatives; the desire to build a strong, centralized state with the power to hold together a large and diverse population, and the realization at the same time that some regions of the periphery would have to be treated differently in order to be successfully integrated. This duality

was clearly spelt out by Dr. B.R. Ambedkar who explained that the Indian federation was not the result of an agreement between already-established sovereign units and as such, no state had a natural right to secede to the Union (Ambedkar, CAD 1949). This statement of the indivisibility of the Union brought a strong unitary bias to the constitution-making. But most of the members of the Assembly cautioned that over-centralization and uniformity in the Constitution would destroy that very unity which the Constitution was intended to secure. They claimed that India was unusually linguistically, culturally and geographically diverse and required federal structures that were responsive to local uniqueness and not mechanical symmetry.

The controversy surrounding tribal regions is especially clear-cut in depicting this dynamic. The framers of the constitution made a distinction between the tribal peoples of mainland India, most of whom, according to the view of Ambedkar, had become substantially assimilated into the larger Hindu cultural structures, and the tribal peoples of the Northeast, who, instead, had been administered as an excluded territory throughout the colonial period and who still possessed quite different social, political and cultural institutions (Baruah 2005). This difference spawned two constitutional approaches the Fifth Schedule, which gave limited protective provisions and advisory bodies to Central Indian tribes, and the Sixth Schedule, which established strong autonomous district councils to the hill tribes of Assam, subsequently to Meghalaya, Tripura and Mizoram. The arrangement of the Sixth Schedule, which gave legislative, executive and judicial power to tribal councils, was a so-called state-within-a-state system, recognizing a tier of distinction beyond what the normal provincial system was able to accept (Tillin 2013). This two-polar model of tribal governance has formed a longstanding trend of asymmetrical federalism in India, which remains to this day to influence the development of conflicts over autonomy, identity and administrative control.

ARTICLE 370: AN HISTORICAL AND JURISPRUDENTIAL STUDY

Article 370 is the most notable and controversial instance of constitutional asymmetry which gives Jammu and Kashmir a separate Constitution and severely limits the legislative power of the Union to other issues negotiated with the help of the Instrument of Accession—that is, to Defence, Foreign Affairs and Communications. The evolution of Article 370, between its inception in 1949 and its abrogation in 2019 and subsequent legalization by the court in 2023, provides a valuable insight into how India has come to conceptualize the idea of federalism and sovereignty as well as the incorporation of geographical areas. Article 370 has its roots in the special historical events of the accession of Jammu and Kashmir. As Presenting the draft provision to the Constituent Assembly, N. Gopalaswami Ayyangar did not justify it as a sign of residual sovereignty but as a constitutional accommodation to special circumstances, such as an active armed conflict, incomplete consolidation of the territory, and involvement in the United Nations (Ayyangar, CAD 1949). These political uncertainties rendered impossible in the opinion of Ayyangar, the integration of the state via the normal constitutional machinery.

Primary sources of the time support the tentative character of this set up. In a letter to Vallabhbhai Patel in May 1949, Ayyangar sent a draft proposal—revised by Prime Minister Nehru—to Sheikh Abdullah, confirming that the future extent of the Union jurisdiction would be determined by an independent Constituent Assembly of Jammu and Kashmir (Noorani 2014). There was a common agreement that Article 370 was a transitional step until the democratic voice of the people of the state was given expression. One of the provisions of Article 370(3) gave the President the power to proclaim the Article inoperative, but only at the suggestion of the Constituent Assembly of the state. As that body dissolved in 1957, without any such suggestion, some scholars, including A.G. Noorani, argued that Article 370 had become permanent, as the only body that could have suggested its abrogation was no longer present (Noorani 2014). Under this interpretation, the union between India and Jammu and Kashmir had attained a status of a quasi-contractual relationship which could not be unilaterally changed by the Union.

The judicial interpretation of Article 370 however has changed radically over the years. In Sampat Prakash v. State of Jammu and Kashmir (1969), the Supreme Court dismissed the arguments that the Article would no longer apply after the constituent Assembly of the state was dissolved, but instead ruled that its continued application rendered the extension of the Union laws by means of Presidential Orders. The rationale behind the decision of the Court supported the concept of gradual integration, considering Article 370 as a tool whereby the executive action could gradually increase the federal power (Sampat Prakash 1969). This approach continued for decades until the dramatic constitutional developments of 2019.

This jurisprudential trajectory was reversed by the Supreme Court in 2023 in *Re: Article 370* when it decided in favor of the plaintiff in a Constitution Bench decision. According to the ruling of the Bench, headed by Chief Justice D.Y. Chandrachud, it was dismissed as Jammu and Kashmir did not have any sort of internal sovereignty following the signing of the Instrument of Accession and the subsequent 1949 Proclamation by the then ruling Yuvraj Karan Singh adopting the Indian Constitution (SC 2023). The Court decided that Article 370 was temporary and transitional, based upon the extraordinary conditions of 1947-49 and was to be in force only until the state Constituent Assembly settled on the ultimate outlines of its constitutional relationship with the Union. When that body no longer existed, it was argued by the Court, the recommendation requirement in Article 370(3) became ineffective, and the President could make the Article inoperative on his own. The Court, in endorsing the soundness of the 2019 presidential order, redefined Article 370 not as a reciprocal constitutional accord but as a one-sided grant of autonomy by the Union to the end of integration.

The decision is a landmark in the Indian constitutional law, and it radically redefines the concept of asymmetry in the Union. The Court prioritized national sovereignty and territorial integrity above regional autonomy by interpreting Article 370 as a friendly and non-binding concession instead of an international agreement. By so doing, it indicated that in case issues of national integration

are to be raised, the constitutional pledge of diversity and asymmetric federalism could yield to the plenary power of Parliament. The ruling therefore realigns the normative environment of Indian federalism, casting serious doubts on the sustainability of other asymmetrical arrangements in the nation.

NORTHEAST: THE FORMATION OF SELF-GOVERNANCE BY THE SIXTH SCHEDULE

Even though Article 370 is now gone, the constitutional map of Indian federalism still has a number of asymmetrical features, particularly those that apply to the Northeastern part of the country with the Sixth Schedule and the multiple provisions of Article 371. These arrangements remain operational to date since the framers of the constitution were well aware at the time that the standard administrative model could not be applied in a uniform manner to tribal frontiers that had a different history, social structure and cultural traditions (Baruah 2005). What has come out is a differentiated constitutional system that will take into consideration the unique needs of tribal regions without disregarding the overall powers of the Union.

One of the main instances of this distinction may be observed regarding the difference between the Fifth and Sixth Schedules. The Constitution creates two drastically different forms of the rule over tribal regions: one of the mainland tribal population and another of the hill tribes of the Northeast. This distinction is based on colonial categorizations that separated so-called excluded regions and so-called partially excluded ones, which were transferred to postcolonial rule (Tillin 2013). In the Fifth Schedule (tribal areas, central and eastern India), the administration is directed by a Tribes Advisory Council having an advisory but not legislative role. The Governor has a great discretion and laws in the state of being are usually applicable except when the Governor thinks otherwise. Researchers have indicated that this design places a lot of power into the hands of state administrations and restricts the degree of tribal self-governance (Saxena 2011).

By contrast, the Sixth Schedule, adopted in Assam, Meghalaya, Mizoram and Tripura, proposes an immensely broader model of autonomy. Autonomous District and Regional Councils are permitted to pass laws on essential topics like ownership of land, management of forests, shifting cultivation, inheritance and social practices. The laws are then effective after the assent of the Governor, which gives the councils a working legislative and administrative space (Baruah 2005). Paragraph 3 of the Sixth Schedule also gives these councils the power to control administration of villages and land allocation, and is much more potent than their Fifth Schedule equivalents. As noted by scholars like Sanjib Baruah, despite the supposedly meaningful self-rule offered by the

Sixth Schedule, it has in many cases led to what he calls a “durable disorder”, in which political autonomy and constant instability and unequal governance outcome are the results (Baruah 2020).

The history of Bodoland is a brilliant example of the manner in which asymmetry under the Sixth Schedule has been bargained out. In 1993, the Bodo received a Bodoland Autonomous Council through the first Bodo

Accord, which however, failed to address the old grievances, as the agreement did not clearly define territorial boundaries and Sixth Schedule protection, and the Bodo again began to unravel and rally up (Weiner 1993). A significant change was witnessed with the 2003 Accord, which created the Bodoland Territorial Council as part of the Sixth Schedule. Even though this gave the region constitutional protection and more administrative capability, the problematic land, identity, and political representation were left unaddressed (Tillin 2013). The last change, the 2020 Bodo Accord, restructured the region again, renaming the Bodoland Territorial Area Districts into the Bodoland Territorial Region and replacing them with a commission to review inclusion or exclusion of certain villages by tribal demographic majorities. The accord also broadened Bodoland Territorial Council executive and fiscal powers and exemptions under the Citizenship Amendment Act, 2019, in recognition of historic demographic apprehensions within Bodo communities (Baruah 2020). These sequential agreements demonstrate a mode of what might be called negotiated asymmetry, in which autonomy is re-tuned according to the mobilization of politics and the occurrence of sub-national violence.

Although it has a noble constitutional design, the Sixth Schedule has a number of structural and political limitations that restrict its effectiveness. One of the main criticism points is the elite capture phenomenon. It has been argued by research that Autonomous District Councils have in many cases been dominated by local tribal elites who have turned these institutions into a source of patronage and political influence as opposed to being an instrument of inclusive development (Baruah 2020). Because of this, funds that could be used to address welfare and infrastructure often end up in the wrong hands, and the disparity between the constitutional ideal of autonomy and its daily implementation becomes gradually larger. Also, the councils have a weak financial structure. Many councils are too reliant on grants and fund releases by the state governments instead of having real fiscal independence. State authorities tend to postpone, limit, or redirect resources and this compromises the autonomy of councils and disrupts the administrative operations (Tillin 2013).

Another whole new level of complexity is the conflict of jurisdictions between the Autonomous District Councils and state legislature. This strain is especially conspicuous in Meghalaya where both institutions seek the control of the land, planning, and regulation of resources. Since the State List and the Sixth Schedule coincide in a number of places, the outcome is usually administration paralysis, but not co-ordinated administration. The rivalry between the powers does not allow smooth implementation of the policies and rather than being cooperative, the dual-governance model often creates a conflict over the lines of institutional boundaries (Saxena 2011). These difficulties highlight that although the Sixth Schedule is still one of the most creative experiments in asymmetrical federalism in India, its success is highly contingent on political goodwill, institutional capability and financial viability.

REGIONAL EXCEPTIONS: THE HETEROGENEOUS TERRITORY OF ARTICLE 371

One of the most persistent forms of asymmetrical

federalism in India is the set of special provisions which appears in the series of Articles 371A through 371J. These provisions are constitutionally enshrined unlike Article 370, which grew more clearly understood as transitional by the political establishment, and which was finally eliminated in 2019 to respond to specific social, cultural, historical, and economic conditions of individual states. It has often been noted by scholars that these state-specific clauses were not initially intended as transitional concessions but were meant to acknowledge long-standing regional peculiarities that could not be effectively addressed under the normal federal model (Tillin 2013).

Of these provisions, the Articles 371A of Nagaland and 371G of Mizoram are notable in providing such unusual strength of protection to the indigenous communities. Both the articles have sweeping non-obstante clauses that make it impossible to apply any Act of Parliament concerning religious and social practices, customary law, administration of justice based on custom or land ownership to these states without express permission by respective state legislatures (Saxena 2011). Even though these provisions are similar to each other, they were developed through various historical agreements, namely Article 371A of the 1960 Sixteen-Point Agreement with Naga leaders and Article 371G of the 1986 Mizo Peace Accord. Although they defend customary law and land rights, Article 371A literally encompasses the term land and its resources, which has given rise to severe constitutional debate in Nagaland. By viewing the term resources in a broad sense, in 2010, the Nagaland Legislative Assembly adopted a resolution that states that the state holds the power to control petroleum and natural gas because Article 371A provides the Naga people with ownership of sub-surface minerals (Baruah 2020). Advocates of this argument in law have said that the Article language overrides the more general dispensation of legislative powers in the Union List.

This interpretation was however violently opposed by the Union Government. In 2023, the Ministry of Home Affairs issued an Office Memorandum, which said that the regulation of mines and minerals is a clear and exclusive prerogative of Parliament under the exclusive powers of entry 53 of List I, and as such the state could not assert legislative powers over petroleum and natural gas by simply referring to Article 371A (MHA 2023). The Centre argued that in the Article, the term land of surface rights and not mineral wealth under the soil. This conflict explains why asymmetrical federalism can be very sensitive: when regional autonomy is in conflict with national economic priorities, particularly extractive resources, the Union is likely to invoke its constitutional supremacy to restrict or redefine the extent of special treatment. The oil and gas struggle in Nagaland therefore brings out the opportunities and the vulnerabilities of asymmetrical rule.

The other notable case of asymmetrical constitutionalism is in the Article 371F, which was added when Sikkim became a part of the Indian Union in 1975 by the 36th Constitutional Amendment. The Parliament understood that, due to the specific demographic and cultural composition of the state (especially the political vulnerability of the indigenous Bhutia-Lepcha

communities), Sikkim would lose its distinctive identity in the environment of the demographic transition in favour of the Nepali population (Tillin 2013). Article 371F(f) gave Parliament the ability to decide on the number of seats per group in the Legislature and twelve of the thirty-two seats were reserved to Bhutia-Lepchas and a special seat known as the Sangha which was to be filled only by members of the Buddhist monastic order. These provisions were questioned in *R.C. Poudyal vs Union of India* (1994) because these provisions contravened the principles of secularism and democratic equality, and especially the rule of one person, one vote. The provisions were challenged and upheld by the Supreme Court in a majority opinion by Justice Venkatachaliah who held that the historical conditions of Sikkim were sufficient to justify the non-observance of absolute electoral equality and that the Constitution itself permitted differentiated equality to promote the political survival of endangered minority groups (Poudyal 1994). An objection lodged by Justice S.C. Agrawal argued that the reservation of a seat in the legislature to a religious institution was against the secular nature of India. Although this was not agreeable, the decision created a clear precedent, that is, the asymmetrical federation can be constitutional when deemed necessary to maintain regional identities or even to adhere to the terms in which a state joined the Union.

The experience of Article 371C in Manipur provides a much more disturbing view of the asymmetry in federalism. The hill areas of Manipur never had any autonomous councils with executive power, as was the case in Nagaland or the Sixth Schedule states. Article 371C instead formed a Hill Areas Committee (HAC) that consisted of legislators elected by the hill districts, whose role was to safeguard tribal interests in the wider legislative system of the state. Nonetheless, the HAC is not an executive body but has merely consultative powers and does not have its own administrative apparatus and budget. Since any legislative suggestion of the HAC has to go through the Meitei-controlled State Legislative Assembly, the committee has been long criticized as structurally unable to protect tribal autonomy (Haokip 2023). Its inefficiency in institutional design has made it a body that many analysts have characterized as a toothless entity and the constant rejection of calls by the state government to consider the institution as Sixth Schedule has fuelled resentment among Kuki-Zomi communities.

The bloody ethnic clash that erupted in Manipur in 2023 exposed the ineffectiveness of this narrow asymmetrical set-up. Inter-communal trust brought down led to a de facto territorial separation, as Meitei groups became concentrated in the valley and Kuki and Zomi populations were displaced to the hills. This tragic situation proves that symbolic or consultative types of autonomy, including Article 371C, cannot be effective in highly divided societies where ethnic conflicts need to be addressed with real power distribution and territorial protection (Tillin 2023). As the Manipur case shows, asymmetry should be substantive the provision of administrative, fiscal and political autonomy in reality, in order to avoid polarization and violence; otherwise, it will only serve to fuel systemic grievances instead of addressing them.

CONCLUSION ASYMMETRY AS A STEP TOWARDS CENTRALIZATION

The history of asymmetrical federalism in India shows that there is a persistent conflict between the consideration of diversity and the unification of uniformity. Historically, asymmetry has been used as a strategic tool to incorporate regions that had different histories, cultural identities, and political courses. However, with recent constitutional and political changes, there is a pronounced trend of increased centralization of the interpretation of federal power, and it is unclear whether the pluralist federal form of India can remain as long as it has.

The general results show that there was a clear shift in logic of asymmetry. First, the abrogation of Article 370 and its judicial support in the 2023 judgment of the Supreme Court is a clear indication that the Indian state no longer tolerates asymmetry based on the concept of internal sovereignty, accession based on treaties or constitutionally guaranteed autonomy (SC 2023). The more limited form of asymmetry that is institutionally acceptable is that which defends cultural practices, customary laws and rights associated with land but nonetheless asserts that overall supremacy of Parliament. According to scholars, this is an indication of a shift in the political or quasi-sovereign models of autonomy to models that appreciate identity without granting legislative autonomy (Saxena 2011).

Second, there is a growing tendency of federal disputes in the present day that are more based on the domination of natural resources than just political identity. The Nagaland ownership of petroleum under Article 371A and the struggles of Meghalaya over coal mining are just some examples of how the constitutional protection of tribal lands and customary law is currently being challenged by the need of the Union to centralize mineral management under the Union List (MHA 2023). This change highlights the influence of economic compulsions, especially in extractive industries, in changing the frontiers of asymmetrical federalism.

Third, the Manipur violence reveals the natural risks of asymmetrical arrangements which do not have a significant institutional authority. Article 371C of the constitution that formed the Hill Areas Committee provides consultative authority without executive or fiscal autonomy. The 2023 ethnic war showed that this kind of symbolic or paper autonomy cannot handle deep socio-political divisions. In cases where the institutions that are supposed to safeguard the minority rights are structurally weak, communities are turning to extra-institutional forms of asserting their demands, such as violence (Haokip 2023). This result supports the thesis that asymmetry should be substantive and territorial, like Sixth Schedule autonomy, in order to avoid instability.

Combined with these, these developments are indicative of a wider federal path that some scholars, such as Rekha Saxena and Louise Tillin, have described as a shift in accommodation and toward consolidation (Tillin 2013; Saxena 2011). Asymmetry has been the glue that holds the Indian Union together since it allows the state to unite frontier areas without subjecting them to homogeneity. However, the modern political and judicial environment appears to be more hospitable to what can be called

symmetrical centralization, that is, the form where asymmetrical provisions are maintained in text but stripped of their substantive meaning by broad interpretations of the Union legislative authority, growing fiscal centralization, and attempts at cultural homogenization, such as language policy.

The main issue of Indian federalism in the next decades will be how to maintain significant asymmetry amid such centralizing forces. The danger, however, is that, assuming that the Union persists in the use of majoritarian or national developmental needs to reduce the range of regional autonomy, India may eventually become, in the real sense, but not in the intended sense, a unitary system, with merely federal attributes remaining. The pluralist constitutional order in India will only survive by reasserting the substantive substance of asymmetrical provisions which will ensure that diversity is a structural component of governance and not a mere token.

BIBLIOGRAPHY

1. Constituent Assembly of India. (1988). Debates of the Constituent Assembly of India (Vols. 7, 9, 11). Lok Sabha Secretariat.
2. India. (1950). The Constitution of India (Arts. 1—4, 244, 246—263, 370, 371 A—H, Fifth & Sixth Schedules). Government of India.
3. India. (1954). The Constitution (Application to Jammu & Kashmir) Order, 1954, C.O. 20. Government of India.
4. India. (2010). Report of the Commission on Centre—State Relations (Punchhi Commission). Government of India.
5. India. (1988). Report of the Commission on Centre—State Relations (Sarkaria Commission). Government of India.
6. India. (1956). States Reorganisation Act, 1956. Government of India.
7. India. (1955). Report of the States Reorganisation Commission, 1955. Government of India.
8. Austin, G. (1966). The Indian Constitution: Cornerstone of a Nation. Clarendon Press.
9. Austin, G. (1999). Working a Democratic Constitution: The Indian Experience. Oxford University Press.
10. Arora, B. (2020). Indian Federalism and Multilevel Governance. Routledge.
11. Baruah, S. (2015). India Against Itself: Assam and the Politics of Nationality. University of Pennsylvania Press.
12. Noorani, A. G. (2011). Article 370: A Constitutional History of Jammu & Kashmir. Oxford University Press.
13. Singh, M. P., & Saxena, R. (Eds.). (2017). Federalising Indian Polity. Oxford University Press.
14. Saxena, R. (Ed.). (2011). Varieties of Federal Governance: Major Contemporary Models. Cambridge University Press / Foundation Books.
15. Tillin, L. (2013). Remapping India: New States and Their Political Origins. Hurst Publishers.
16. 2023 Supreme Court Review: Federalism. Accessed November 9, 2025, from <https://www.scobserver.in/journal/2023-supreme-court-review-federalism/>
17. Punchhi Commission Report - ilearnCANA. Accessed November 9, 2025, from <https://ilearncana.com/details/Punchhi-Commission-report/4153>
18. 1983 The Commission on Centre—State Relations (R.S. Sarkaria). Accessed November 9, 2025, from <https://cbc.gov.in/cbcdev/pi-1983/pi-1983-story.html>