



**Constitutional
Federalism
Institute**



ASYMMETRIC FEDERALISM

(အချိုးမညီ ဖက်ဒရယ်စနစ်)

NORMATIVE AND PRACTICAL GROUNDS, MECHANISMS AND ENVISIONING FOR MYANMAR

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Asymmetric Federalism

1. Introduction

Seven decades after independence, there is an important and key political question in Myanmar's politics. This is a quest of how the 'State Structure' of Myanmar, where multi-ethnicities live together, will be established, and governed. For many years after independence, highlighting the civil war did not bring peace to the ethnic territories, and the great political crisis that emerged after the 2021 military coup partly reflects this problem.

Under the current political circumstance changes in Myanmar, it has become accepting that 'federalism' is not only the mere 'choice' but also a 'necessity' in the consideration of the future of the country's administration and power sharing. However, the clear discussions and agreements on the aim and process of establishing federalism is still not as strong as it seems. The writing of this paper also emerged from these backgrounds.

This paper mainly focuses on one type of federalism, "asymmetric federalism." In this paper, it addresses the discussion of the basic definitions and characteristics of asymmetric federalism, the arguments in favor of and against such a system for further consideration. In addition, it also described and discussed the forms of the constitutional and legal due process practice in asymmetric federalism, and the methods of federal governance and policy work implementation. In addition, it also presents the experiences and examples of countries with asymmetric federalism around the world. In the final section, it concluded with the views of the political leaders and organizations that play a key role in the current political landscape of Myanmar on the question of whether it is appropriate to adopt an asymmetrical federalism in Myanmar and what opportunities and challenges the country may face in the future if it adopts an asymmetrical federalism.

2. Basic Definitions and Characteristics of Asymmetric Federalism

In the world, a total of 25 countries are federal countries, accounting for approximately 40 percent of the world's total population (forum of federations 2021). However, there are different types of federalism among countries, including symmetric federalism and asymmetric federalism, which vary from country to country in application of these types of federalism. In comparison, the adoption of an asymmetrical federalism is much later than symmetric federalism (Sahadzic 2023). In the academic field, the study of federalism became more widespread only in the period after the World War II, and asymmetric federalism was introduced by Tarlton (1965) to highlight the differences in the relationship between the central (federal) government and some of the governments of the federal units in the federal system (Sahadzic 2023).

There are different definitions of asymmetric federalism. According to Stepan (1999), asymmetric federalism refers to the distribution of different powers from the central federal government to the state governments (Papagianni 2006). In addition, some regions of the country are under a unitary system, and the establishment of a federal relationship from the central government with some relevant local governments in other regions based on territory, ethnic and cultural diversity can also lead to an asymmetrical federalism (Papagianni 2006). Moreover, asymmetrical federalism can be established by signing a bilateral agreement between the central government and the relevant local governments. According to Bolaji (2010), he states that asymmetric federalism is composed of political units that reflect the diversity of interests, characters, and structural compositions that exist within society (Tariq 2020).

Maja Sahadžić, a researcher of federalism, says that there are two facets in asymmetrical federalism. The first is political or de facto asymmetries in the sense of impacts, and the second one is constitutional or de jure asymmetries in the sense of jurisprudence (Sahadzic 2023). Politically, in asymmetric system, there are differences in the relationship between the federal government and the members of governments based on party system, wealth, population, and territory, as well as differences in ethnicity, religion, language, culture, politics, social, and economics.

On the other hand, the constitutional asymmetric system also involves political asymmetries, with constitutional and legislative differences in the distribution of political power, fiscal autonomy, and status among the federal component units. Among these criteria, it can be measured by the recognition, representation, participation among the federal component units, the use of veto power in central-level institutions, political autonomy, the right to taxation and revenue (Sahadzic 2023).

Asymmetric federalism has many characteristics. Muhammad Tariq, a researcher of federalism says that in an asymmetric federalism, the relationship between the central and member governments, as well as between each level of member governments, can be studied in four dimensions of relations (Tariq 2020): (1) vertical relations, (2) horizontal relations, (3) sectoral relations, and (4) formal and informal relations. The first relation is to be the relation between the central government and the member of governments (component units), the second relation is to be the relation among the federal component governments without the central government. In addition, the third relation is more related to the cooperation between different government agencies, depending on the sectoral activities, such as financial authority, constitutional authority, managerial capacity, and technical expertise. The last aspect, the formal and informal relation, means that there are normal relations between government agencies, departments according to the constitution legal procedures, normalized bureaucratic mechanisms. On the other hand, equally important as such, there are also informal relations that are based on oral discussions, unwritten customary practices and mutual understanding (Tariq 2020).

Moreover, according to a federal researcher Maja Sahadžić, asymmetric federalism has features that can regulate and prevent secession from becoming the ultimate political demand for the member governments (Sahadžić 2023). These features are (1) Continuous negotiations; (2) Different paces of negotiations and (3) non-permanence. This means that in an asymmetric federal system, there may be more options and variations in making compromises regarding the design of institutions and processes, which are based on enabling to re-negotiate over time and continuous negotiation. In such compromising, negotiations can be carried out in different stages

and at different paces rather than deciding all at once. Finally, such a negotiation does not have to be permanent, it can also be transitional and sequential.

On the other hand, there are pre-conditions for the emerging of asymmetric federalism in federal countries (Funk 2010). Asymmetric federalism does not emerge by itself, but a combination of cultural, economic, social, and political factors that create asymmetric power and dominance among the different components' units in a federal state. These prerequisites can be divided into two groups: socio-political and cultural-ideological, which include the following things.

1. Political Cultures and Traditions

They are practices or customs that give rise to the norms and culture of a particular group, thereby affecting how a political group operates ideologically, politically and legally. For example, some federal countries have a culture of social welfare for every citizen and everyone regardless of where they live, through which provisions are included in the Constitution to regulate the minimum living standard for everyone and the principles of inequality between regions.

2. Social Cleavages

Social Cleavages can be noted as the cultural factors such as religious, linguistic, and ethnic/national diversity.

3. Territoriality

Territoriality is a concept of territory identity, referring to the relations between the different regions and the way they affect the politics of a region.

4. Socio-Economic Factors

This refers to the economic inequalities among the regions within a federal country and the needs or expectations that arising from those inequalities.

This essentially means where and how many groups of people are located, and how the demographic patterns interact with the economy of a country as a whole and of a

member unit. The relationship involves several factors, such as fertility rate, immigration patterns, and labor market structure. These factors are closely linked to the representatives' issues, and such demographic patterns can also lead to unequal representation of citizens within a federal country.

3. Reasons for Practicing Asymmetric Federalism

Normative and Empirical Grounds

In political theory, asymmetric federalism has two aspects: normative and empirical. In normative theory, asymmetric federalism is often used in the diverse societies to reflect "values, beliefs, and interests" (Funk 2010).

According to Gagnon and Gibbs (2009), there are three important principles behind the need for asymmetric federalism: They are -

- (1) "communitarian principle," that is to preserve the diverse political communities within a country;
- (2) the "functional principle," that is to effectively manage the large and diverse territories; and
- (3) the "democratic principle," that is to guarantee the political participation, freedom and equality of all citizens and ethnic groups within a country (Gagnon 2009).

Each of these "principles" based on such a "normative" assumption leads to asymmetric federalism. On the other hand, from the empirical point of views, asymmetric federalism is often used for the problem-solving purposes in the construction of federal political stability (Funk 2010).

In addition, Alain-G. Gagnon (2001) further says that asymmetric federalism can also be based on from three more other factors if "stability" is emphasized over "justice" (Gagnon 2001). First, according to communitarianism, when it comes to the concept of "good", a person, a citizen, it differs based on his or her community rather than on

an individual basis. Therefore, the state has a responsibility to protect these communities, and there is a need for "asymmetrical integration" in the countries with many ethnicities and cultures.

Second, the idea of classical liberalism is based on the principle of equality among citizens. If in a federal country, which is organized on the ethnic/cultural-based rather than territory-based, the member state governments can adopt different laws individually according to the needs of the citizens within the state, the same concept itself is said to implement equality of outcome rather than identical treatment between different communities within a federal state.

Third, it is related to constructing a broader democratic setting. For this to happen, it is necessary to have interaction between people over time, and it is also important for a "deliberative democracy" to have well-organized civilized communities.

The third point is related to building a broader democratic setting. For this to be the case, it is necessary to be able to discuss and coordinate between the public over time. To be a 'deliberative democracy', it is important to have well-organized cultural communities. Therefore, asymmetric federalism is said to provide an appropriate condition for the full establishment of a diverse democratic federal setting.

In addition, by adoption an asymmetrical federalism, there can be both advantages and disadvantage. One of the advantages of an asymmetrical federalism is that it allows autonomy to be distributed over time to different regions (Martinez-Vazquez 2003). On the other hand, one disadvantage is, ideologically speaking, asymmetric federalism also describes the inequality within a country. Two federalist researchers, M. Govinda Rao and Nirvikar Singh, address that this de facto asymmetrical federalism can be helpful for "nation-building" if it is based on transparent policies, but on the other hand, the exclusion of political power for short-term convenience poses challenges to the functioning of government institutions and can give birth to instability and disharmony in the country in the long run (Rao and Singh 2004). In other words, there may be different impacts between a form of power sharing based on transparency and the rule of law to ensure the smooth functioning of the country and a form of power sharing with little transparency and political compromise between political parties and groups (Rao and Singh 2004). In other words, the first type is the

one that emerges through conventions or constitutional arrangements for the proper functioning of the federation. However, the second type is the result of the balance of executive and political power within the federation, which built on the mutual understanding of political parties and politicians, which can have negative consequences in the long run.

On the other hand, according to Rainer Bauböck, an Australian political scientist, what makes federal cohesion strong in the multi-ethnicities democratic countries is not due to a shared national identity, but to a shared recognition of multi-level self-government and federal citizenship (Bauböck 2001). These perspectives can harmonize the different national identities. However, some basic principles of symmetric equality, regarding the allocation of powers and federal representation are needed (Bauböck 2001).

He further continues that the principles against the asymmetric federalism in multi-ethnic democratic countries are mainly based on three principles: cohesion, equality, and transparency principle (Bauböck 2001).

According to the first principle, "cohesion principle," asymmetric federalism can destroy by pouring 'acid' liquid into the 'glue' factor that binds different member units together into a multi-ethnicity country. In addition, the granting of autonomy disproportionately to certain regions within a country can also be led to secession and undermine the cohesion of the country.

In relation to the second principle, "equality", even though an asymmetric federalism does not lead to secession, it can lead to inequality within the federal component units, and but also to unequal executive power among the member states of federations. Therefore, this can lead to unequal representation among citizens in each member units of the federal government, which can pose challenge to equal federal citizenship.

In addition, regarding to the third principle, "transparency", if the asymmetric federal system is adopted among the federation units, the relation between the central government and the member of federation units, i.e., "vertical relations", may have several formulas, depending on the number of member units, rather than a single

formula. Additionally, if some state governments are granted special representation and the right to use veto power in some policy areas, it can also lead to complications that could jeopardize democracy. For government leaders and politicians, it can increase the ability to bargain and make necessary compromises, but it may become more difficult for ordinary people to understand how politics and governance work. From this, this adds some complexities and could lead to a situation of lack of transparency, undermining the right to information for citizens to actively participate in the implementation of uniform laws on a national scale in making the important decisions in the country.

However, Rainer Bauböck further continues to discuss that there are ambiguities and loopholes in all three principles. The first is that the fact that asymmetric federalism weakens cohesion, which is impossible if the three factors of (1) political self-government for the member units, (2) power sharing within the federal government, and (3) common federal citizenship are properly handled. The second point on 'equality,' he argues that there is no need for equal power among the federal components units states in order to achieve equality among the individual citizens, and that the idea that such an asymmetrical federalism leads to two classes of citizenship is also derived from "confused moral thinking". This means that when it comes to the rights of individual citizens, regardless of the unequal distribution of power among the federal component units, the whole country is entitled to enjoy the same rights. As for the third principle, transparency, he said that the federal system is inherently more complex, has multiple levels of government than a unitary government system, and on the other hand, the government mechanisms can be created in such a way that they are more closely involved and accountable to the people. On the other hand, in an asymmetric federalism, the presence of different layers and regulatory means that there is a greater chance of finding a political solution through "bargaining" rather than "arguing".

On the other hand, Rainer Bauböck reiterates that asymmetric federalism, unlike the above-mentioned arguments, should be based on three basic principles, especially in the diverse democratic countries: (1) freedom of choice, (2) minority disadvantage, and (3) deep diversity (Bauböck 2001).

The first principle, freedom of choice, is derived from libertarianism. According to this view, every individual has the right to freedom of choice, and a political community is formed in accordance with the personal agreement of each of these individuals and groups. In the same way, secession, the right to secede should be exercised either individually or in association with other groups because of the collective of individual's consences. If such a group does not want to secede and wants to further extend its political authority in the political community, it should also have the opportunity, he said. Therefore, the fact that each member of political unit should have equal political power is irrelevant, and if the citizens of one member unit demand more political power than the other members, it may be unfair to deny it on the grounds that it affects "symmetrically", he argues.

Secondly, the idea of minority disadvantages not taking advantages over minorities is also a driving force for building an asymmetric federalism. Normally, liberal egalitarianism emphasizes equal access to opportunities and resources, and the need for democratic governments to treat every citizen with equal respect and dignity. On the other hand, John Rawls argues that if the primary goods are unevenly distributed, then the distribution is justified if it benefits the worst-off groups. Therefore, these fundamental rights should take into account the political and cultural rights of the most vulnerable or disadvantage minorities in a country. If defining a majority's language as the official language, happening to dominate the languages of a minority, and in turn, a majority language within an autonomous region, can dominate the language of a minority in another region. Therefore, it is important that all levels of government grant such minorities the rights to preserve their culture and identity.

Finally, the need for adopting the asymmetrical federalism in the ethnically diverse democratic countries is related to the presence of "deep diversity". According to communitarianism, the identity of everyone is shaped by the characteristics of the community environment, and the most important community characteristics are such as their birth descent, religion, race, and mother tongue language, which they do not have the right to choose. Therefore, it challenges the liberal idea that state institutions should be neutral without promoting any cultural characteristics, and pointing out that it is important not only to treat a citizen as an equal human being, but also to recognize him as a member of a civilized community. Through, it is important to recognize each

civilized community that exists in different forms, as well as to build mutual recognition between these communities. Therefore, for deep diversity of the civilized communities, different political arrangements are needed to protect such deep diversity, and asymmetric federalism should exist as a necessity one.

4. Countries with Asymmetric Federalism and Their Experiences

History and Origins of Indian's Asymmetric Federalism

As India is a diversity of ethnicities, religions country, and its asymmetric federalism experience has been influenced and derived from this diversity. India's experiences can be roughly divided into two parts: Kashmir and Jammu territory and North-East territory case. The Kashmir conflict (1947-1948) was one of the biggest threats to the early period India's Independence. Kashmir and Jammu are located in the Himalayan Mountain range and are home to a majority of Muslims. Maharaja Sir Hari Singh, who ruled the region at the beginning time of India's independence, was a Hindu and wanted cooperation with India. As a result, this led to the emergence of armed separatist movements in Kashmir with the support of armed groups from Pakistan, which posed a major challenge led to the First Indian-Pakistani war (Keay, 2010).

The situation in the northeastern territory is different from the case of Kashmir. There are about one hundred million hill tribes in India, scattered throughout India, and some of them resides in areas such as the northeastern region (Bhattacharyya, 2023). In general, the people living in the northeastern regions such as Nagaland, Manipur, Mizoram, etc. are mostly hill tribes' people and have different cultural traits from other parts of India. These areas are also the most underdeveloped regions of India, where armed movements continue to occur until this day (Das, 2013). These regions are also one biggest challenge facing for India since its independence. Therefore, India has been trying to resolve these regional issues from a constitutional angle since independence until now (Das, 2013).

The period of India's initial constitution-making and attempts to form a union can roughly be dated from the time of independence to 1956. During this period, designation of states and other sectors were prioritized and on January 20, 1950, the federation was formed into 27 states/federal units (Bhattacharyya, 2023). During the period from 1953 to 1956, the role of the States Recognition Committee (SRC) of India became important. The committee initially proposed that the powers and status of the states proposed to be formed should have equal power (Bhattacharyya, 2023). At the same time, the Autonomous Tribal District Council was formed, and the Special Autonomy of the Kashmir and Jammu territory was included in Article 370 of the Constitution of India, which gave special autonomy to these territories, as well as the right to self-determination and other rights to these territories^[1]. For the North-Eastern Region, Article 371 of the Basic Law was enacted for protecting the identity of the indigenous peoples of the mountainous regions, and the provision of providing finance and financial supports for mountainous regions (Bhattacharyya, 2023). After that, these states were designated as Special Category States (SCSs), and up to 2019, 11 states (including 8 states from the Northeast region) were placed under this category (Bhattacharyya, 2023).

When the Bharatiya Janata Party (BJP) came to power in India's general elections in 2019, amendments were made to the special autonomy granted to Kashmir and Jammu region. As of his campaign promises during election, when he came to power, he with the approval of the parliament abolished Article 370, which granted the special privileges to these regions (Aljazeera, 2019). By doing so, the BJP-led government appears to have intended to bring the disputed regions of Kashmir and Jammu under the control of the central government. However, Article 371, which grants special privileges to the northeastern regions, was still approved, and remains unchanged. The problems of asymmetrical federalism in India are problems^[2] that have been faced since the time of independence and to this day and can be attributed to several religions and ethnicities differences.

Lessons from Catalonia, Basque and Spain's Asymmetric Federalism

Spain went through four decades under the rule of the military dictator Francisco Franco but did not experience the colonization and independence movements like India experienced and began its democratic transition and constitutional reforms in the post-Franco period in 1975s (Mas, 2019). However, the rooted causes of the current problems in Spain derived from the Spanish Civil War and the dictator Franco's rule. During the Spanish Civil War (1936-1939), Catalonia was the base of the republicans and was suppressed by Franco's troops, while in Basque, there were also uprisings for liberating Basque country during Franco's rule (Mas, 2019). The Catalonia of Spain and the Basque region also differ from the regions of India mentioned above, as well as from the regions of Nigeria and Sudan, which will be discussed further below. The fact that these two regions are the wealthiest region of Spain is a distinction from most of the regions that practice asymmetrical federalism (especially the regions indicated in this chapter) (Mas, 2019).

The role of the statute of autonomy can be found in the 1978 constitution, which began the post-Franco democratic transitions in Spain. Article 2 of the 1978 Constitution of Spain guarantees the autonomy of the regions and peoples in order to prevent the disintegration of the Spain's national unity, and Article 137 provides for the establishment of autonomy regions (Agranoff, 2010). In December 1979, referendums were held in Basque and Catalonia to confirm the autonomy of these regions, and the Basque and Catalonia were approved as autonomous regions, leading to the enactment of the Law on the Harmonization of the Autonomy Process (LOAPA) in 1981 (Agranoff, 2010). At the same time, these regions were able to establish their own parliaments and government bodies. Therefore, since 1980, the autonomous regions have been able to manage the revenues from the judiciary, the arts, municipal assets, heritage taxes, etc., and between 1985 and 2002, the executive powers of education, health, social services, etc. were gradually transferred from the central government in Madrid to the autonomous regions (Agranoff, 2010). After 2000, there was a competition between the central government and these autonomous regions, and in 2005, the central government in Madrid published a white paper reviewing the status of Catalan autonomy, focusing on issues such as cooperation between the central government and the autonomous regions, cooperation in public services, and

the allocation of funds (Agranoff, 2010). The 2008 economic crisis had impacts on the autonomous regions. From 2010 onwards, separatist movements in Catalonia grew stronger, gaining momentum in 2012 (Andreu, 2019). Separatist parties have also gained strength within the Catalan parliament, and in 2017 a referendum was held and 90.18% of the local population voted in favor of the secession of Catalonia (Andreu, 2019). However, the Spanish central government denied that the act was not in accordance with the Spanish constitution and arrested the leaders of the Catalan region (Andreu, 2019). Catalonia also experienced linguistic and cultural repression during Franco's ruling during the Spanish Civil War, as it sided with Franco's rival republicans, and its language and cultural characteristics are also different from those of other regions of Spain (Agranoff, 2010). The scars from the dictatorship's eras may have quite impacts on Catalan separatism. The separatists' movements that emerged from the difficulties of such authoritarian regimes can be seen in cases of Nigeria and the separated movements in South Sudan, which will be discussed further.

Nigeria: Conflicts Stemming from Civil wars and Regional Differences

During the 1960s, African countries gained independence from colonial rule. Since that time, most African countries have transitioned to a federal system, usually in the form of both holding together and coming together, with Nigeria being the first country to establish a holding together federal system since independence (Suberu, 2017). On October 1, 1960, Nigeria gained independence from the British, dividing Nigeria into the Northern, the Western, the Eastern Region, and the Lagos State Territory (Egwim, 2020). More than 250 ethnic groups (some say as many as 374 ethnic groups) in Nigeria. With round about 200 different local languages, the federal arrangements had not been enough at the period of the post-independence of Nigeria (Anugwom, 2020).

The early stage of Nigeria's transition to a federal system, especially before the 1966 military coup, mark one of the most decentralized periods of Nigerian federalism, with the military government suspended the 1963 Constitution of Nigeria and increasing the control of centralization after the 1966 military coup (Suberu, 2017) (Egwim, 2020). Since before independence, there have been ethnic tensions in Nigeria, as well as

economic, social, and political divisions among regions. Particularly, the powerful northern tribes, the Hausa-Fulani, have always been cautious of being dominated by the smaller tribes of southern Nigeria, and the northern tribes have been concerned about the south's rising of power (Suberu, 2017). Most of the people living in the eastern parts of Nigeria are the Igbo tribes, and they often have conflicts with the tribes in the south (Egwim, 2020).

In 1967, the eastern region of Nigeria declared its independence as the Republic of Biafra. Since then, the Nigerian civil war has broken out and between one and three million people have lost their lives, including most of the Igbo ethnics (Anugwom, 2020). The war ended in 1970 and it was one of the largest civil wars in Nigerian history, resulting the Igbo ethnics migrating to the southeastern of Nigeria (Anugwom, 2020). During the ongoing period of military regimes, the predominantly dominated people were from the North of Nigeria and the army was also largely from the north (Egwim, 2020). By 1996, states were reorganized into 36 states, the same numbers that continues existing today.

Since after the return of civilian government's rule in 1999, many northern states have been working to enforce Islamic law (Egwim, 2020). As the widespread ethnic and religious divisions in Nigeria, Islamic militant groups emerged in the northern region in the late 2000s, and these issues are still being dealt with today. In Nigeria's federalism problem, the practice of asymmetric federalism has turned a blind eye on the identities of ethnic minorities, there has been too much centralization, and most of the country's rulers are also from the northern part (Anugwom, 2020). As a result, it is still difficult to deal with the ethnic and religious conflicts among the regions.

Experiences from the Sudan's Secession, Civil wars, and Conflicts

Sudan is also a country of ethnic and religious diversity, and has been plagued by civil wars, separatist movements, and ethno-religious conflicts since independence. Sudan, which has experienced 35 military coups, is also a country where civil wars

are still raging because of the military dictatorships' rule, coups and repression (Ayferam, 2023).

Since before Sudan got independence in 1956, there have been tensions between the south and north of the country, and there are many differences especially between north Sudan, which is predominantly Muslim, and South Sudan, which is predominantly Christian. Since the Arabs invaded parts of the current Sudan more than 600 A.D., north Sudan has been dominated by Arab culture and Islam, and since the British annexation in the 1890s, Christian missionaries have been anchored in South Sudan, where there have been great religious and cultural differences between the north and the south, and these differences have become a source of conflict since independence (Ayele, 2017). Since even before independence in 1954, politicians and leaders in South Sudan have been calling for the building of a federal system that would guarantee South Sudan's right to self-determination, and there have been armed resistances since 1955 (Manoeli, 2019).

Until 1972, Sudan did not have a constitution, and the 1957 Constitutional drafting Committee emphasized the unitary system over the federal system, and members from the South Sudan withdrew from the committee, worsening the situation of the civil war (Ayele, 2017). The First Sudanese Civil War (also known as the Anyanya Movement) lasted from 1955 to 1972. After the military coup by General Nimeiri in 1969, peace talks with South Sudan began. And the Addis Ababa Agreement was signed in 1972.

However, the agreement had several shortcomings compared to the Comprehensive Peace Agreement (CPA) signed in 2005. Especially, the 1972 agreement did not fully guarantee the rights and freedoms of the South Sudan people, nor did it include a guarantee of secession (Malwal, 2015). Only half of the governance power was guaranteed, and the managerial economy activities of the South were not allowed to operate freely. In particular, the economy of rich oil resources in the southern region, was controlled only by the central government in the north (Malwal, 2015). When the Basic Law of 1973 enacted, it ignored the facts of the 1972 agreement and prioritized the establishment of the unitary system (Ayele, 2017).

In 1983, the Sharia Islamic law was officially enacted, and after the Al-Bashir's military coup in 1989, later transformed it into the Islamic Federation (Ayele, 2017). Since then, the Christian-majority southern region has been subjected to increasing repression, including the activities of forcing Christian clerics and pastors out of the country (Malwal, 2015). As a result, civil wars broke out again between the south and north, lasting from 1983 to 2005, and in 2005, the Comprehensive Peace Agreement (CPA) was signed.

Sudan did not have a constitution until 1972, and the 1957 Constitution Drafting Committee emphasized a unitary system rather than a federal system, and members from the south withdrew from the committee, worsening the situation of civil war (Ayele, 2017). The civil war known as the Anyanya Movement (the First Sudanese Civil War) lasted from 1955 to 1972. After the military coup by General Nimeiri in 1969, peace talks with South Sudan began. In 1972, the Addis Ababa Agreement was signed.

The agreement (CPA) contained more guarantees than the 1972 agreement, particularly, it guaranteed autonomy in the southern region, allowed for a vice president (Ayele, 2017). In addition, it also included the right to secede six years after the agreement was signed (Ayele, 2017). In 2011, a referendum was held in South Sudan, with 98.83% of South Sudanese voting in favor of secession, and South Sudan became an independent country (Ayele, 2017). However, since independence, Sudan is still facing civil wars based on conflicts between indigenous peoples and the resource allocation of oil-rich regions (Ayele, 2017). Although the first and second civil wars in Sudan were resolved by the peace agreements, in practice, South Sudan was given only a limited degree of autonomy, and important resources remained under the control of the central government (Malwal, 2015). In addition, diversity of religion and the succession of military governments have increased and promoted Islam-related laws in the northern regions. As a result, the characteristics of an asymmetrical federalism were lost, and the differences between South Sudan and the central government intensified, leading to the secession of South Sudan.

5. Forms of Constitutional Processing

Asymmetric federalism is generally used when a state differs from other states in terms of autonomy rights or other federal rights, either by legislation or by embedded in the constitution.

In this section, the four models of the Constitutional asymmetric federalism will be presented.

(a) Asymmetric Federalism in the Federal Constitution

A federal country or state must have its own self-rule and share-rule among states. In doing so, the asymmetric federal practices, in according to the special designated states, were defined by special articles and laws in the constitution. For example, as mentioned above, the "States" section of the Constitution of India states that "all the states of India shall be covered by the present Constitution", but in these states, the states of Jammu and Kashmir are given special exemption (the Constitution of India - Article 370 (1) (b) (2)). This means that the Indian parliament restricts the executive powers of the two states' defense, foreign affairs, and financial management affairs.

(b) Asymmetric Federalism in a Decentralized Unitary Constitution

Although structured as a unitary system, there is a tendency to reduce centralization and amend the constitutions to give more, emphasizing to the rights of the states when the states demand asymmetrical federalism constitution. Papua New Guinea, for example, is a constitutionally unitary country, but with less centralization. After that the emergence of a secessionist movement on the Bougainville Island. To prevent this secessionist movement, the constitution was amended by abolishing the decentralization clauses. As a result, the conflict with the separatists intensified and the demand for independence arose. However, in 2001, a peace agreement was signed between the government and the separatist groups, designating the island of Bougainville as an autonomous state within the constitution (Wallis 2014).

(c) Asymmetric federalism model in tightly centralization of the unitary system Constitution

It is not possible to apply an asymmetric federalism in a constitution that practices unitary system and tight centralization. However, another approach is to draft and apply an external law that is consistent with the constitution. Unlike previous models, this model is even more difficult because it requires asymmetric federalism by drafting the law in accordance with the constitution. In Philippines, for example, a peace agreement was signed in 2014 between the government and the Moro Islamic Liberation Front, which agreed to create a special zone for Muslims in Mindanao. For designation, the Bangsamoro Basic Law was drafted, which is a form of asymmetric federalism that is defined not in the constitution but by extra-constitutional legislation.

(d) An asymmetric federalism model in combining of the constitution and common law

To be effectively apply of the asymmetric federalism, there is a model of a combination of constitutional and common law. For example, the system of government in Hong Kong is derived from the Hong Kong Special Administrative Region Constitution. The law is based on the Sino-British Joint Declaration of 1984 between China and the United Kingdom, and the law itself is currently used as the mini-state constitution of Hong Kong. Article 31 of China's Constitution also provides for the establishment of special administrative regions, and the practice of asymmetric federalism is also compatible with the China constitution.

6. Practical Implementation of Asymmetric Federalism

In all federal countries, more or less of asymmetric federalism were adopted in variety forms, rather than an absolute alignment between states based on the existence of ethnic diversity, wealth, and history (Anastassia Obydenkova, 2004). Beyond that, to be able to coexist with these different ethnic groups and reduce conflicts, different rights have been granted over time, and the constitution has also implemented and established different levels of asymmetric federalism. The main thing is to what extent asymmetric federalism will be practiced for the stability and peace of the country.

According to the scholars, there are two models of asymmetric federalism in use between the central government and the states. The first is the model of scholar Alfred Stepan, who suggests that asymmetric federalism should be practiced in two sectors. The first is the practice of asymmetric federalism within the socio-economic sector, which allows for negotiations between different ethnic groups within the country. The second is the practice of constitutional asymmetry of the country (Stepan, 2000). Another idea is Watts's view. For Watts, he defines asymmetric federalism as political asymmetry and constitutional asymmetry. Political asymmetry refers to the adoption of an asymmetric federation based on the demands of the states, which have different cultural, economic, and social differences from one state to another. When these factors are incorporated in the constitution and reassigned powers to the state governments through the constitution, there will be constitutional asymmetry. In most federal countries, through formal constitutional process, the asymmetric federalism of legislation, executive, and finances are often adopted in order to give the state governments more autonomy.

Another idea is Watts' idea. The asymmetric federal system is divided into political asymmetry and constitutional asymmetry. Political asymmetry means different cultures from one state to another. With economic and social disparities, it means applying asymmetric federalism based on demands arising from those states. When these factors are included in the constitution and reassigned power to state governments through the constitution, there will be asymmetry in the constitution. In most of the federated countries, through the formal structure, the state governments have more autonomy through legislation. Asymmetric federal systems of administration and finance are often practiced.

7. Asymmetric Federalism and Secession's Impacts

In a federal system, the biggest threat to political stability is the secession movement itself (Filippov et al., 2004). In a situation where there are many ethnic groups living there, and these ethnic groups are demanding autonomy, their demands often increased to the emergence of an autonomous state, which resulting in secessionist movements (Hechter, 2000).

The biggest threat to political stability within a federal system is the secessionist movement (Filippov et al., 2004). In a situation where many ethnic groups live and these ethnic groups demand autonomy, these demands are often extended to the emergence of a self-governing state, and separatist movements arise (Hechter, 2000). Therefore, if ethnic groups do not accept the existing political context and want the secession movement, then there is a debate about whether or not the implementation of an asymmetrical federalism can remedy such situation.

The main issue of the secession movement is the political status quo. In the context of the issue of the ethnics' self-determination, there will be questions of thoughts on whether the ethnics will establish a new country or remain in the present one. Further, it will have to calculate the potential costs and benefits of secession movements for the establishment of a new country. Therefore, the central government should review these calculations and adopt an asymmetric federalism to create a situation in which it is more beneficial to remain in the old existing country, so that the secessionist movements can be prevented (Young, 1994).

By looking at that situation, it is possible to see whether a country with many ethnic groups can adopt an asymmetrical federalism based on the existing conflicts. The most important and fundamental issue in the conflict is the ownership of the geographical territory, the question of who has the right to own what area and to what extent. Both the state government and the central government want to have the highest authority of a region. The central government wants to own the region because it is the government of the whole country (Chapman & Roeder, 2007). For states, it wants to have the rights to fully management of the region for the basic reasons such as history of state and ethnicities (Kymlicka, 1998).

There are situations where secessionist movements can arise when minorities in a state are not satisfied with the existing political context. There are situations where the central government controls central-level institutions and regional revenue units. On the other hand, there may be fiscal inequalities within the normal federal system, as the state only receives the national revenue unit. In such context, secession may occur (McGarry, 2002). In such a situation, if the state secedes, it will gain more control over the region and more financial rights, changing the current status quo and giving more weight to the secession movement.

On the other hand, situation may arise where the central government has to adjust to the demands of the states in order to maintain the status quo and reduce secessionist movement. At that time, asymmetric federalism was applied as a solution.

It shows that adopting an asymmetrical federalism strengthens the country's democratic system and reduces political tensions between the central government and the states, as it allows the people to participate more in decision-making, madidates to the needs of different communities, and better guarantee the democratic rights of a federal country. Looking back at the history between Quebec and the Canadian federal government, there have been tensions between Quebec and the federal government over the recognition of minority rights within the ethnic states, which has led to the adoption of asymmetric federalism. By doing so, it has reduced the tensions between the state and the central government (Simeon, 2001).

However, there are also different opinions on the asymmetric federalism among scholars. One different view is that adopting asymmetric federalism may weaken the state building and strengthen secession. Another view is that asymmetrical federalism emphasizes more on state resources and autonomy, which can encourage nationalist movements, and increase demands for autonomy, which can increase secession (Simeon and Conway, 2001). Therefore, it is especially essential to assess the underlying background condition and whether a state can create a stable political environment. For example, the fact that Canada existed as a federal country for about 100 years ago before the secession movement emerged (Simeon and Conway, 2001).

Looking at these proposals, there are two different perspectives on the applications of asymmetric federalism. The first view is that asymmetric federalism gives different, unequal powers between the central government and the states, causing confusion and intensifying conflicts. Another view is that to enabling regulatory among different states, it can only be convenient to apply asymmetric federalism by state within the constitution.

8. Asymmetric federalism and Ethnic Equality Issue

Asymmetrical federalism is a form of federal system, practice enhancing the relevant rights, self-determination among the different states and ethnic groups, so there may

also be issues of equality between ethnic groups. When practicing asymmetric federalism, two equality problems encountered are (a) different constitutional divisions of power between states and (b) different constitutional divisions of power between the federal government and the states (Brendan O'Leary, 2011).

(a) Different constitutional divisions of power between states

An asymmetric federalism, by its nature, provides for different constitutional divisions of power between the states, and the main role of it is the legislature, though vary from sector to sector. In federal countries, the federal parliament is divided into two: the People's Assembly, which is based on population, and the Nations Assembly (Senate), which is based on ethnicity. When implementing asymmetric federalism, the number of House of representatives from the more populated and more powerful regions often exceeds the number of other minorities (Ronald L. Watts, 1999). Looking at the Canadian Parliament, the number of House of representative in Ontario and Quebec is about half that of the Canadian Parliament. For the Senate, the representation is determined by the size of the states in the constitution (Bauböck, 2006). For example, in Germany, although each state has a minimum of three seats for representative, but for more than two million people, there are four seats, for more than six million people, there are five seats, and for more than seven million people, there are six seats (Edin Šarčević, 2005).

(b) Different constitutional divisions of power between the federal government and the states

In a typical federal state, the division of executive, judicial, and legislative powers between the central and state governments is consistently the same, while in an asymmetric federation, the division of power between the central and state governments may vary from state to state. If breaking down the different forms of power distribution, we can find four forms:

(1) a form that restrains the power and authority of the states for a certain period of time,

(2) a form that increases the power and authority of the states,

(3) the ability of the states to increase or decrease the power and authority according to the relevant circumstances, and

(4) the ability of the states to exercise autonomy in according to different times (Ronald L. Watts, 2008).

The first form is found in the Federation of Rhodesia and the Federation of Nyasaland, which lasted only about ten years. This is the form that experimented with a limited federation, allowing the power of state governments for a certain period of time and then restricting it (Watts, 1981).

The second form is found in many countries. In Canada, an asymmetric federalism has been adopted, giving Quebec more power and authority than other provinces, as well as providing for the state language and authority in education, legislation, and legal proceedings process (Watts, 2008).

The third form is the Spanish model. The Spanish constitution provides for two paths for regional autonomy: a path that can demand rapid autonomy for historical regions and a path that can demand gradual autonomy for other regions. Thus, it is a form of asymmetric federalism where different regions can claim different autonomy. Not only that, but different financial agreements were enacted for other autonomous ethnic groups such as Basque and Navarre (Luis López Guerra, 1995).

The last constitutional asymmetric federalism can be found in Italy. In Italy, the special designated states can negotiate their division of powers with the central government, it can be found different divisions of power and jurisdiction between the states over time. In the United Kingdom, Scotland, Northern Ireland, and Wales have similar arrangements with the British government. Even though the central government controls ways of taxation, Scotland has the right to impose a basic income tax. Likewise, Wales has the right to use the Welsh language as the official language.

9. Analysis of Practical Grounds of Myanmar Political Context and Asymmetric Federalism

Myanmar/Burma is a place of historical and geographical diversity of ethnicity, religion, and culture. By population, the majority population of the Burmese ethnic lives in divisions, there are also diverse ethnic nationalities those reside within states. In addition to the different geographical areas and economic resources within each state, there are also different historical backgrounds, political attitudes, and socio-political relations among the ethnic groups within each state.

With such background conditions, some of the characteristics of "asymmetrical federalism" can also be found in "the 1947 Constitution", the first constitution of Myanmar after independence, although it does not explicitly contain the form and essence of federalism. These include guaranteeing Shan State and Karenni State the right to secede after 10 years, as well as structuring Kachin State and Chin Hills Special Division with special political arrangements. In addition, under the 1947 constitution, the legislature is composed of members of the upper house, called as "Nationalities assembly", where different numbers of parliamentarians were sent by members of states or regions.

Since the military coup in 2021, there has been quite lot of talks in Myanmar politics today that it should be governed by an "asymmetrical federalism" based on different backgrounds. However, the 2008 Constitution, which is currently held by the state administration council, and the Federal Democratic Charter, which was enacted by the National Unity Government, do not explicitly mention about "asymmetric federalism". On the other hand, part 1 of the "Declaration of Federal Democracy" of the Government of National Unity states that "a federal democratic union is composed of member states with genuine democracy, equality and self-determination", but it is however not clear whether this "equality" means political equality or equality in terms of constitution and power.

On the other hand, it is worth noting that in Myanmar political context, there are still special regions like Wa and Mong La regions that have their own military, administrative and economic out of the central government's control, and moreover in

the last few years, we have seen the emergence of groups such as the United League of Arakan/ Arakan Army (ULA/AA) that have grown in strength and demanded some kind of autonomy like the Confederation. Therefore, there are many questions in Myanmar's federal politics odyssey about how to build harmony between groups with such different political agenda, how to guarantee the rights of "ethnic minorities" "ethnic majority" within a state, and how to resolve ethnic tensions in a mixed-ethnics state and territorial disputes between states. In this brief paper, we asked and presented the opinions of relevant political organizations and important observers, analyst on these issues. In the above topics, when asked why the ULA/AA, which has publicly officially called for a "confederation system", wants a "confederation" for Rakhine State, one responsible person of ULA/AA answered that

"We, as the ULA, have long considered the Confederation to be an appropriate political framework for Rakhine State, and we officially started talking about it around 2019. Basically, we, the ULA/AA, are an organization that fights based on the political will of the people of Rakhine State, so it's about creating the kind of political framework that best suits the political wills and political will of the people of Rakhine State." (Excerpt from an interview on October 10)

He further added that Rakhine State is a state that has been historically independent and prosperous for millennia, and that its current status not only has sufficient geographical location and accessible to the sea route for the confederation system, but also covers the basic political needs of their region.

On the other hand, there are those who comment that the level of political sovereignty demanded by the ULA/AA may be too high, and there are also those who discuss how such demands should be based in an asymmetrical federalism. When asked about this view by political researcher Naing Bayar Moon, he said:

"Right now, I cannot speak much about it. If say "Wa" is an asymmetrical, and at what situation. At this situation, "Wa" is totally in separated form. When it is in that separated form, totally in that separated form, so does it in a form of asymmetrical form. And also for Arakan, I don't know much about their political main point, but my opinion is that like "Wa" and "Arakan" if giving them "symmetrically," the rest of the states should also be given "symmetrically," he said. (Excerpt from interview, October 30)

He went on to reply that there may be asymmetries in terms of economic development, but on the other hand, based on development, equality must also be considered, and it should be implemented based on different situations in hills mountain and proper mainland.

Continuing to talk about the matter, he said:

“In such a situation, it is like a form of separation, we need to support more of asymmetric federalism. When I say other states, I mean in some states, they produce lot of resources, like Kachin. Is there any desire to distribute them all equally? I think they have to think about asymmetrically, that kind of pattern when they think about whether to allow the resources that comes out of their state to be used in their state.”
(Excerpt from interview, October 30)

In Myanmar politics, the historical background, and current political realities of ethnic groups, including the Burmese, are difficult to overlap between one group and another. On the other hand, the political demand for "national equality" has also been a very broad concept in the history of federal politics and ethnic political movements.

When asked about these matters to a ULA official, he replied that the political history of Myanmar has been marked by the adoption of the "federal system" since independence, but in practice there is no clear definition, nor has it been implemented, and that the civil war broke out, and the Arakan people were only suffered under the Burmese-dominate military dictatorship and one-party dictatorship system.

When asked why the ULA is calling for a “confederation” for Arakan, meanwhile other ethnics are trying to build a "federal system," he said:

“Arakan peoples were being forced into the Myanmar boundary. In the past, no Myanmar government allowed the Arakan people to freely express their political wills and desires. In short, there is no political settlement between us and the Myanmar government, and now we can be very clear in expressing about what we want. I also understand that other ethnic groups and political groups are also talking about their political goals based on their political history and geography background, and we have no objection to what they want to say.” (Excerpt from an interview on October 10)

According to the above answer, the political system proposed by the ULA applies mainly to Arakan State and is not a criticism of how the federal system should be constructed in a nationwide scale. On the other hand, the two main characteristics of federalism are self-rule and shared rule.

When asked about these issues, a political researcher Naing Bayar Mon said:

"The main thing is that whatever we say federalism or whatever, when we are in place implementing equality, I think we need to create a system that reflects the will of the people. This is more related to federalism and democracy. When they are more related to democracy, some people will come forward to demand their needs. So, we need to create a system that can change the will of the public when they demand it." (Excerpt from an interview on October 30)

He goes on saying that the system should not be fixed but should create in according to the changing situation and political development is the key essential factor. In the political development process, democratic maturity and power-sharing should be in joint-consideration, he said.

In addition, when practicing an asymmetric federalism, it is important to discuss significantly that which member states should be given what powers and to what extent they should be entitled to. In addition, there are significant tensions between asymmetric federalism and full equality. On this view, Naing Bayar Mon said that.

"Well, my understanding is that asymmetry is asymmetry everywhere, or it is just asymmetry in some places. Bur in the representative of federal union, I think everyone is on the same page. But in some places, the idea is that in India, because they are afraid of joining Pakistan, they are given special rights, special privileges over other states, and that feature has not appeared in anywhere yet. (Excerpt from an interview on October 30)

Further, he went on addressing that it is important to determine on what grounds such asymmetry should be based, but that there must be equality among all, and that if the asymmetrical and more powerful state is one layer above higher, it will affect equality, and that it is difficult to accept in this context.

The question of what powers the member states should have, and if adopting an asymmetric federalism, what kind of asymmetric powers each state should have, is quite controversial.

Regarding on this matter, one ULA's official said in his point of views that,

“Our ULA/AA’s position is that the government of Arakan is the central government of the Arakan people. The use of term may difference. On the other hand, we want to build a beneficial relationship with the governments, and our assumption is that we can work together on foreign affairs, market economic management, and so on.”
(Excerpt from an interview on October 10)

The official continued adding that in terms of geography, the regions with full autonomy such as ‘Wa’ and ‘Mongla’ are better off in terms of security, economic development, and public welfare than most other regions in Myanmar, and Arakan State also has good potential and will build a system of government that is directly accountable to the people.

In addition to these issues, it is also very important for the future federal politics and peace building in Myanmar to ensure that the relations between the federal member states and grantee the rights of other ethnic and religious minorities within a federal member state.

When asked about the mixed of ethnic groups among such federal member states that may occur in the future, Naing Bayar Mon said,

“I think we need to implement our equality, minority rights at the state level, we need to impart more, prioritize more. He thought about changing Impartment, whether it was an equal opportunity among other minorities to make those minorities in the region. This is his territory, and when it's like that, we must create that kind of atmosphere.”
(Excerpt from an interview on October 30)

He went on addressing that the two ethnic groups are mixed in Mon and Karenni, and that another ethnic group resides within a state should also be given equal rights. On the other hand, the existing state boundaries may not be a major problem for the construction of a federal system, as the previous boundary designs were less based on the existence of ethnics, and in the future, if the boundaries of a state are to be changed, it must be reflected the will of the local population.

Another issue is that it is important guaranteeing the rights of ethnic minorities and religious groups within a member state, and when asked about the rights of other ethnic and religious groups, including Muslims in Arakan state, a ULA official said,

"We have long been discussing to allow non-Arakan ethnic groups to grant regional autonomy rights based on their history, culture and socio-economic circumstances. At the same time, we are also working to build understanding with other non-Arakan ethnics living within the territories under our jurisdiction." (Excerpt from the interview of October 10)

Further, he went on to explain that the officers on the ground of their governing bodies, regarding to the ethnic affairs, primarily dealt by the relevant ULA member ethnics, the relevant community leaders, and that there have been some levels of progress.

10. Conclusion

If speaking about the federal system, at the same time of we discuss about the division of power between the levels of government, how the three pillars are structured, how the federal units are formed, we must understand that there is a federal system needed to address is asymmetric federalism. There are many aspects of asymmetric federalism that can be measured, and like other features of federalism, it varies from country to country.

There are various laws and constitutional frameworks that create an asymmetrical federalism, such as constitutional laws, legislative laws, treaties between the central government and the relevant federal units, and the key question is what level of government or institution the power must enact, amend, or repeal them. In Asymmetric federalism, there are normative factors such as equality of outcome, community-based policies, and protection of minority rights, but it also has practical ground factors such as shaping an effective system of government, geographical diversity, socio-economic backgrounds, and different historical backgrounds.

Depending on its origins, the forms used vary from country to country, as do the powers exercised by the respective federal units, the legal and temporal validity of its

powers, and the representation of the federal level of government (especially its federal unit in the legislative branch) is varied.

In Myanmar, one of the possibilities is that in the future there will be some form of asymmetrical distribution of power among the coexist federal units. Things to consider in this context include the past ethnic political grievances, territorial distance or proximity, different socio-economic bases, diverse and existing forms of governance, etc. In addition, the considerations that could not be left out are the relevant ethnic and religious minorities within the respective federal units (state), national equality between the ethnics within the federation, possible territory disputes, and the existence of scattered ethnics between more than one federal unit. We need to discuss and create a balance of power sharing that works between the possibilities shaped by the politics and resources, and the rights of minorities, individual rights, and sustainable peace.

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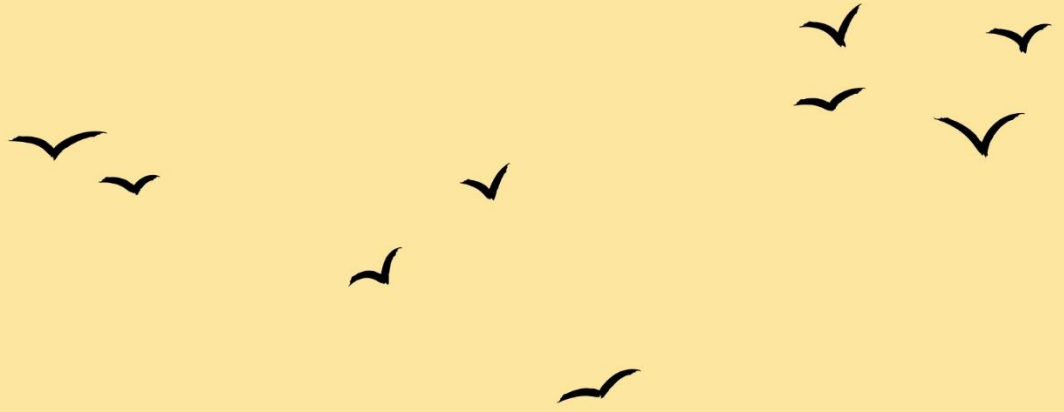
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[¹] However, there have been frequent attempts at central intervention in the regions of Kashmir and Jammu, and the special regional rights granted to these regions by the constitution have been questioned throughout. In addition, there are also some saying that the Northeast regions are not getting equal rights like other regions. (Bhattacharyya, 2023).

[²] India still faces armed conflicts in these areas until today.



ASYMMETRIC FEDERALISM

(အချိုးမညီ ဖက်ဒရယ်စနစ်)



**Constitutional
Federalism
Institute**