

Cooperative Federalism in India: Assessing The Role of Intergovernmental Institutions in Policy Implementation and Fiscal Federalism

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Abstract: Instead of being mutually exclusive, strong states and a strong centre are dependent on one another. Powerful centres could not exist without strong states, and vice versa. State-centre cooperation is facilitated by the Indian Federation. Disparities in race, religion, and culture undoubtedly point to a federal organisation, and intergovernmental cooperation is necessary. One of the most important factors in achieving the optimum results from cooperative federalism in India, a multi-party democracy, is political coherence. Even though the Indian constitution lays out the roles and powers of the union government and the state in detail, the government does not function in a vacuum. However, it is frequently observed that barriers arise when it comes to rendering decisions. This essay concentrates on how the objective of cooperating federalism is still unachievable due to these divergent political interests and beliefs. Additionally, this study offers suggestions for the future.

Keywords: Indian Federation, Political Coherence, Cooperating Federalism, State-Centre Cooperation

I. INTRODUCTION

A central authority and several regional governing bodies share power under the political idea of federalism. The division of federal and state governmental power is thus referred to. The Latin word "federalism" is derived from "foedus," which implies agreement or covenant. Two levels of government are in charge of a country under federalism. A single Federal and union states are the two main categories of states. The federal government and its states share power in federal states, while in a union type of governance, the central government holds all the power. The federal government works with the states under the federal system to advance national development and equitable progress. The unitary system of government, often known as central government, concentrates all of the government's tasks in a single government. Within the federal system, the government and the provinces are submissive to the central government, despite the fact that the federal and state governments have autonomy and a separation of powers. The authors of the Indian Constitution took note of federalism, which was used in countries such as the US and Australia.

They recognised the need for a system that could satisfy the needs of a big and diverse country like India and took note of the country's practical requirements. As a result, the Indian Constitution incorporates aspects of both unitary and federal government. It is based on the notion that, in spite of federalism, unity and the interests of the country come first.¹

China, the United Kingdom, Indonesia, Japan, and France are just a few countries that have unitary governments, which are the most common in the world. There is just one power in charge of the whole

¹ Akhtar Majeed. "India: The Emergence of Cooperative Federalism." In *Dialogues on Constitutional Origins, Structure, and Change in Federal Countries, Vol. 1*, McGill-Queen's University Press, 2005.

government. Decision-making power rests in the central government, and the freedom to free speech and expression is not completely exercised. The unitary system prevents states from passing their own laws and subjects them to the national authority. Under the federal form of government, the connection among the states and the federal government is horizontal. The central government does not hold all of the authority; the state entities share it. India's structure, however, is "quasi-federal."

II. LITERATURE REVIEW

Cooperative federalism is a system in which the federal government and state governments work together to achieve common goals and address national issues. By combining resources and duties, they are able to create policies and programs that benefit the people they serve as well as the government at large. In cooperative federalism, states receive funding and guidance from the federal government, but they also have some discretion over how to implement federal programs and rules. The aim is to cooperate in order to accomplish common goals, even though this may lead to variations in policy and execution amongst nations. Other forms of federalism, including dual federalism, where the federal and state governments function independently and with minimal cooperation, might be compared to cooperative federalism.

III. RESEARCH METHODOLOGY

Doctrinal research was the research methodology used to complete this dissertation. This is a descriptive and analytical doctrinal investigation. Most of the information and data on the topic has been obtained from internet and secondary sources. According to my faculty mentor's instructions, books and other materials have largely been helpful in giving my dissertation a strong foundation.

IV. MEANING OF COOPERATIVE FEDERALISM

Cooperative federalism is a concept or subset of federation which involves national, state and local governments together to solve common problems and supply goods and services to the public. In the case of *State of Rajasthan v. Union of India*², the Indian political system is cooperative. Federalism may be cooperative, competitive, executive, or collaborative. Under cooperative federalism, the state and the federal government are horizontally connected. They focus on national development because they are working in the same direction. Cooperative federalism encourages the States and Union territories to discuss a variety of issues with the Ministers. This type of federalism does not recognise supremacy. Cooperation is necessary, and there is a flexible and healthy relationship between the states and the central. Under cooperative federalism, the role of the union government is to be that of the older brother.

This cooperative federalism concept helps achieve desired results by promoting state cooperation and lowering conflict. This coordination between the states aids in the advancement of public welfare. Because it has the most money, the Centre can assist other states in fulfilling their obligations. The Centre also relies on the states to implement legislation created using the Concurrent list. The Granville Austin stated that India is an example of a bargaining federation, but Morris Jones described the Indian Federation as a cooperative federation. The negotiating model centre is a big brother. But because of the coalition administration, the state government's negotiating power has also grown in comparison to previous periods.³

In contrast to the United States, not every state has equal status or representation in the union parliament. Different states are covered by a range of provisions. According to Alfred Stepan, India is a "Demos enabling

² 1977 AIR 1361, 1978 SCR (1)

³ Pal, Chandra. *Centre-state Relations and Cooperative Federalism*. Deep & Deep, New Delhi, 1983.

model," while the United States is a "Demos constraining model." There is under-representation of demos and people in the USA because every state, regardless of population, has two senatorial seats. of contrast, the Rajya Sabha of India is referred to as the "Demos enabling model" since seats are distributed based on population, resulting in greater representation. Therefore, in terms of the federation model for emerging nations, Alfred Stepens believes that India is a superior example than the USA.

V. INDIA'S TRANSITION TO COOPERATIVE FEDERALISM

The idea of "competitive federalism," which denoted a spirit of rivalry between the federal government and the states, gradually evolved into "cooperative federalism" as a result of the Indian Constitution's was draughted, the traditional economies of the United States and Canada were going through two world wars and the Great Depression of the 1930s. The political structures in such nations had undergone centralisation at that time, regardless of the constitution's design. As a result, shared or collaborative sovereignty was adopted during the draughting of the Indian constitution in place of the federal theory's dual sovereignty notion between the state and the central. The Indian constitution's founders believed it was appropriate to grant the Parliament considerable authority because it was written during such a time of change. Therefore, the state becomes extremely centralised during an emergency, yet under regular conditions, the centre also has the last say. Because Parliament has been granted exceptional powers, legislative law takes precedence in the event of a conflict. As a result, the Indian constitution incorporates the idea of cooperative federalism, which the conventional federal arrangement did not allow.

With so many different languages, ethnic groups, and traditions, India is too big and diverse to be ruled by a single central government. As a result, the constitution's framers chose the federal system. According to the constitution, governments are not infallible on their own. The centralising nature of Indian federalism prevents the country from possessing a completely federal taste. Most important subjects, such as railroads, foreign policy, citizenship, currency, and defence, are under the Union's jurisdiction. The central government has the final say, even though both the state and the central government can pass legislation on the subjects mentioned in the concurrent list. Although there is interdependence, there is no independence. Cooperative federalism is the term used to describe our Constitution's quasi-federal structure, which acknowledges the fundamental independence of the federal government and the states. According to Article 1, India, also known as Bharat, is a Union of States. This means that the Union of India is permanent and unbreakable because Indian Federalism was designed with a strong centre. The constitution's authors understood that our nation's resources were not distributed fairly and that a strong centre was necessary to guarantee the basic needs of the average person and to fundamentally alter the structure of Indian society. The draughting committee has also said unequivocally that although India is a federation, unlike the United States, it is not the product of state agreements to join it, and states have no power to resign from the Indian union.⁴

The only reason the nation is separated is for administrative convenience; otherwise, it is a single nation. As a result, Schedule 7 of the Indian Constitution divides legislative authority between the strong central and the other states. We are therefore a quasi-federal government rather than a unitary or federal one. According to Article 3 of the Indian Constitution, the Parliament has the authority to alter the region, borders, or name. States can be destroyed by Parliament's unilateral action, and the centre can merge or abolish them.

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⁴⁴ Statement by Chief Justice D. Y. Chandrachud: GST is a "classic example of cooperative federalism." *India Today / Economic Times*, October 2024.

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VI. SARKARIA COMMISSION ON INDIAN FEDERALISM

In India, strong inclinations towards centralisation surfaced following independence as a result of one monopoly party's control. But in 1967, the Congress Party's hegemony was challenged, and several regional and political parties have subsequently arisen. Because of their strong position, the States can also bring exerting strain on the Centre. Now that things have altered, calls to restructure Indian Federalism have been voiced repeatedly. However, they are largely overblown and impractical. The below-mentioned recommendations were included in the Sarkari Commission's report:

- The States shouldn't receive the residual powers from the Centre.
- It was underlined that federal supremacy was necessary for effective operation.
- Despite being a highly contentious clause, the request to repeal Article 356⁵ was denied. It should, however, be used very carefully and in a limited way.
- Additionally, the suggestion to merge the Finance and Planning Commissions was denied.
- In accordance with Article 263, additionally, the Commission recommended the Intergovernmental Council to be established.

VII. THE LEGAL FOUNDATION FOR COOPERATIVE FEDERALISM

- The Constitution's Article 16 states that "India shall be a Union of States." This makes it clear that cooperation between the states and the Union is required under the constitution and that they are inseparable.
- Three lists—the Union list, the state list, and the Concurrent list—make up Schedule 7 of the Constitution⁶, which outlines the topics on which the relevant government may enact legislation. Both the state and the union have the authority to enact laws regarding the subjects covered by the concurrent list.
- The Indian Constitution's Article 263⁷ creates an Inter-state Council to look into issues that are important to the general public and require investigation. The council is in charge of offering suggestions for improved coordination and implementation between the state and the centre, which is a significant obstacle for cooperative federations. According to Article 263(a), this council is also tasked with resolving issues that arise between the states. It facilitates the development of both vertical and horizontal cooperation. To offer suggestions for improved coordination of state-level sales tax policy, four regional councils have been established.

Article 263 also established the Central Council of Health, an advisory body whose duties include recommending health-related policies, draughting laws and establishing general policy lines, and assessing the potential for state-to-state cooperation during epidemics and quarantines. Intergovernmental Council A body to study and look into issues of shared interest between the federal government and the states is established by Article 263 of the Constitution. In *Dabur India Limited v. State of Uttar Pradesh*, the Supreme Court suggested creating a body to discuss and decide central state taxes under Article 263.

- According to Article 282, grants may be made by the Union or a State for public purposes even if those reasons fall outside the purview of their respective legislatures, as specified in the seventh schedule.

⁵ Constitution of India

⁶ Constitution of India

⁷ Constitution of India

Article 282⁸ also implements fiscal transfers to states. For the Centrally Sponsored Schemes (CSS), it is carried out.

- All public acts, documents, and judicial processes of the Union and each State should be accorded full confidence and credit throughout the territory of India, according to Article 261's Full Faith and Credit clause 9. This is a step in the direction of greater cooperation and confidence between the states and the federal government.
- Between the federal government and the states, Zonal Councils were established by the States Reorganisation Act of 1956. Geographically speaking, there are five zonal councils: the Northern, Eastern, Western, Central, and Southern ones. Every state is equally represented. It seeks to encourage the councils to debate any issue brought before them by the states in which they have a shared interest, such as issues pertaining to linguistic minorities, interstate transportation, water disputes, economic and social planning, etc.

VIII. TRADITIONAL INSTANCES OF COOPERATIVE FEDERALISM INCLUDE

a) NITI AAYOG

In order to facilitate excellent governance in India, NITI Aayog was established. It creates unique plans and regulations to guarantee sustainable growth. NITI Aayog is developing into a state-of-the-art resource centre with the knowledge and abilities needed to react swiftly, encourage innovation and research, provide the government with a strategic policy vision, and handle unforeseen challenges. Its main project is the Atal Innovation Mission (AIM), and it has an allied office called the Development Monitoring and Evaluation Organisation (DMEO). Cooperative federalism guarantees that all tiers of government work to advance national development.

Recognising that strong states constitute a strong nation, NITI Aayog seeks to accomplish national development with the active participation of states through ongoing, regular, and organised assistance initiatives and policies. Additionally, it emphasises bottom-to-top planning strategy by creating plans at the village level and gradually combining them at the highest governmental level.

In 2017, the NITI Aayog called for competitive "cooperative federalism," highlighting how this strategy will change the Union-State dynamic. The former vice chairman of the Aayog, Arvind Panagariya, put the responsibility for redefining the Indian brand on the States. In keeping with the spirit of competitive, cooperative federalism, the Aayog's operation appears to have the advantage of enabling states to compete with one another to develop governance concepts. In terms of competitive cooperative federalism, the Aspirational Districts Program is the flagship initiative of NITI Aayog. The initiative primarily targets 112 of the least developed districts in the country. The five pillars used to rate these districts are: education, agriculture and water resources, health and nutrition, basic infrastructure, skill development, and financial inclusion. The rankings encourage both cooperative and competitive federalism. Additionally, it adheres to the three Cs: convergence, collaboration, and competition. In order to score these districts, it develops a robust set of creative processes and a real-time feedback system.

b) GST COUNCIL (ARTICLE 279 A)

One of our nation's most innovative financial tax innovations is the Goods and Services Tax (GST). It was brought about by the 101st Constitutional Amendment Act of 2016, which abolished a number of both federal and state taxes and cesses. It has given states numerous opportunities to grow while maintaining appropriate tax administration. As needed, a two-thirds majority of the Parliament enacted the act, which was endorsed

⁸ Constitution of India

by over half of the states. The Constitution's federal principle is genuinely upheld by the clauses that abolish custom duties. The ethos of federalism is exemplified by slogans like "One India, One Tax."

The implementation of the GST is a prime example of cooperative federalism, in which some federal and state authority is given up for the benefit of the general populace in the form of a single tax. All state and union ministers collaborated to provide suggestions and make significant tax decisions in the GST council. The Act's enactment, along with a number of other initiatives like Article 279 A, which grants states 66.67% of the voting rights in the GST Council, is evidence of what cooperative federalism is capable of.

Even if a proposal entails a fundamental restructuring of budgetary relations between the Centre and the states, the accomplishment is a laudable endeavour given the geopolitical context of Indian politics, where reaching an agreement is quite uncommon. Cooperative federalism is essential for governance, especially in a nation with as much diversity as India. Decisions must be reached by consensus and dialogue among the federal government and the states in order for policies to be implemented as effectively as possible for the benefit of all citizens.

c) ALL INDIA SERVICES (ARTICLE 312)

Another illustration of cooperative federalism is AIS Services. Despite being a unitary feature, the central government maintains these services after consulting with the state governments. An integrated judicial system was created to maintain both federal and state laws. They are recruited by the Central government and distributed to the states. While the state government retains control over small issues like promotion and transfer, the union government retains major decisions about hiring, such as age of retirement, dismissal, and removal, among others.

Consequently, even though the state has instant authority, the federal government has ultimate control. An excellent illustration of cooperative federalism is the All India Services, which are run in consultation with the states. Over the past three years, a number of agreements have been reached in the spirit of cooperative federalism to put an end to extremism and establish enduring peace in the states of the Northeast. On March 29, 2022, the chief ministers of Assam and Meghalaya reached a historic agreement to fix their interstate boundaries. It is claimed that this deal will guarantee enduring peace, promote development, and greatly benefit the local population. In the government sector, new medical colleges are also being founded nationwide under a centrally financed program, with a 60% central share. The program exemplifies cooperative federalism because it makes it impossible for either party to assert complete ownership.

The finest illustration of federal-state collaboration is the matter of *Jaora Sugar Mills v. Madhya Pradesh*⁹. The Madhya Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1958, which was enacted by the Madhya Pradesh government, established a tax on sugarcane that was due in compliance with the Act's guidelines. Because the Centre had this Act, which had legislative competence over the matter under the Union list, was finally declared illegal. As such, it was declared invalid. Nevertheless, the Parliament recognised that this Act has many of the same constitutional flaws and contradictions as previous state statutes. In order to address this issue, the Sugarcane Cess (Validation) Act 1961 was passed. A two-year tax was mandated to be paid by the appellants. After the High Court rejected the petition, the appellants disputed the Act's constitutionality, arguing that it was "colourable legislation." Despite the Act's questionable intent, the Supreme Court declared it to be constitutionally permissible.

IX. OBSTACLES AND POLITICAL BARRIERS

The relationship between the party in power in the centre and the parties in power in other states is not friendly when we have diverse political parties and leaders. Therefore, several issues remain unresolved at the political

⁹ AIR 1964 MP 118

level. Major projects that impact crores of people ultimately collapse as a result. Due to the rivalry between the political parties, the multi-party system leads to disputes between the state and the union. The competing parties' ideology and personalities have created a barrier in the legislative process. Regional parties ultimately oppose laws that are beneficial to the public in order to win votes for a particular town. This is a significant disadvantage of a cooperative system as, in the end, the Indian people do not profit from the programs.

Thus, conflicts between the federal government's and state governments' agencies have become frequent in India. Two recent examples support the aforementioned statement: Kerala objected to the Citizenship Amendment Act of 2019 and filed a challenge contesting its legality. According to the state, this Act discriminated against minorities. The amount of fine for breaking traffic laws was raised by the centre in The Motor Vehicle Act, 2019. However, states with opposition party governments, including as Madhya Pradesh, Chhattisgarh, Rajasthan, Kerala, Odisha, and West Bengal, wish to halt the bill due to populist sentiments. Act of 2019 to amend the National Investigation Agency interest, the government enacted legislation to combat terrorism. It gave the NIA more authority to look into terror-related cases nationwide without obtaining specific governmental approval. However, the states interpreted it as a challenge to their authority over such issues.

The opposition-party-ruled states are constantly vying for greater authority and independence. Additionally, they believe that the allocation of monies is biased. Implementing the central schemes at the zonal and district levels becomes extremely difficult as a result. While GST was in effect, the opposition parties did not participate in the midnight session and strongly opposed the move. For instance, the state of Uttar Pradesh has 80 districts with a population equivalent to all of Pakistan, demonstrates how crucial state cooperation is. Furthermore, it has not been possible to positively impact and benefit the final individual.¹⁰

There haven't been any noteworthy outcomes from the Zonal Councils, which were established to encourage Interstate cooperation by talking about shared issues and working together to find solutions. These statutory bodies' objectives are to make recommendations and act on issues that states represent that are of shared interest. It makes it possible for the states to combine their resources and find solutions to local issues. The rivalries between the bordering states have prevented these councils from fulfilling their mandate. When various political parties have power, there is usually conflict between the states. The Zonal Councils have fallen short of their goals, according to the Sarkaria Commission, which also stated that sessions have to be held in camera at least twice a year.

Regarding the River Water Disputes, India has numerous rivers that traverse numerous states, making it impossible to consider any one of them to be a state's property. As a result, the centre is in charge of it, and Article 262(1) gives the centre the authority to decide cases involving the use, distribution, and management of the aforementioned water. The water of the Sutlej River has become a point of contention between the states of Punjab and Haryana. The inquiry concerned whether the Punjabi government was required to build a canal for the shared water supply. However, Punjab was ordered to build a canal because of an earlier agreement.

The Supreme Court limited the President's legislative authority as stated in Article 356 in the case of **S.R. Bommai v. Union of India**¹¹. It was observed in the aforementioned case that the fundamental constitutional framework is a federation. The states are under the Centre's authority. There have been numerous instances of controversial terrain. First off, due to constitutional provisions, taxes are a contentious topic. States were

¹⁰ Jha, Prakash Chandra. "India's Cooperative Federalism during Covid-19 Pandemic." *Indian Journal of Public Administration*, Vol. 68, No. 2, 2022, pp. 245-256.

¹¹ AIR 1994 SC 1918

forced to give up their taxing authority under the Goods and Services Tax (GST). The centre retains all of the money collected from a variety of taxes.

X. CONCLUSION

India is nearly incomparable to other nations due to its dense population and wide variety of ethnic groups. Given this diversity, cooperative federalism is the only viable option for addressing our nation's requirements. When the state and the centre collaborate on programs, work proceeds more quickly and benefits are distributed to the final recipient. The State and the Centre rely on one another. Despite having a strong centre, we are a union of the centre, and the constitution clearly outlines the functions of the centre and the states. The political leaders must realise that the state also has a common interest in the plans and initiatives the centre has introduced. The leaders of the opposition parties ought to adopt those programs and not impede them in any way. Given that nations do not have the resources necessary to the goals of the programs, the centre will supply the state with the resources it needs. The centre must provide the plan enough leeway for the states to make their own decisions. Because what may be necessary in states in the northeast may not be necessary in states in the south. Since certain states are larger than the majority of nations worldwide and have unique characteristics, there cannot be a single prescription that works for all of them.

The centre must adjust its plans to meet the needs of the states. To ensure that the budgetary needs are met, the state should likewise hand over control to the centre. Once the centre recognised the challenges of the States to help and support the plans in order to give them freedom and leeway. Addressing concerns and working towards a solution is a cooperative federation's objective. The states should demonstrate their willingness to cooperate and achieve shared objectives. Rather than using a "one size fits all" strategy, the Centre should create effective norms for obtaining corporations from the states. Every state's many ethnic groups need to be considered. Therefore, in trying times, the centre must act as the anchor, but States must not be disregarded. Covid had tested the federal system. Without any direction from the centre, some panchayats and other local bodies actively participated in handling the situation during the pandemic. The most significant lesson from the crisis was that for the union and the state to work together effectively, there must be a healthy level of cooperation.

REFERENCES:

- [1] Akhtar Majeed. "India: The Emergence of Cooperative Federalism." In *Dialogues on Constitutional Origins, Structure, and Change in Federal Countries*, Vol. 1, McGill-Queen's University Press, 2005.
- [2] 1977 AIR 1361, 1978 SCR (1)
- [3] Pal, Chandra. *Centre-state Relations and Cooperative Federalism*. Deep & Deep, New Delhi, 1983.
- [4] Constitution of India
- [5] AIR 1964 MP 118
- [6] Jha, Prakash Chandra. "India's Cooperative Federalism during Covid-19 Pandemic." *Indian Journal of Public Administration*, Vol. 68, No. 2, 2022, pp. 245-256.
- [7] AIR 1994 SC 1918