

(Working Paper) **Intergovernmental Relations in India: A case for Cooperative and Collaborative Federalism**

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Abstract: *Federalism in India as opposed to Federalism in USA (based on dual federalism which necessitates exclusive jurisdiction) was essentially established on the model of cooperative federalism (based on shared jurisdiction between the centre and states). Early federal constitution framers, influenced by classical dual sovereignty, did not view intergovernmental forums as necessary. However, the authors of India's Constitution recognized the necessity of intergovernmental forums in the federal structure. During the Constituent Assembly deliberations, there was agreement to establish inter-governmental forums like Inter-State Council(ISC) & National Development Council. The return of a single-party majority government at the Centre in 2014 necessitates the strengthening of inter-governmental forums to ensure that the federal system functions smoothly. There is a significant need to empower institutions like ISC and make them more engaging, inclusive, transparent, and responsible. Moreover, there are several illustrations of working of cooperative federalism in India, the most prominent one being the Centrally Sponsored Schemes formulated and initiated by the central government but the implementation involves multiple actors. Furthermore, the COVID-19 epidemic had presented government systems worldwide with a significant and challenging experience. The resolution of such a crisis necessitated a collaborative effort between federal government and sub-national units in order to effectively coordinate policies. This is the framework of Collaborative Federalism which requires both the cooperation between the central government and the state governments and an active collaboration between multiple actors including civil society organisations. It is the conceptualization of a cooperative and equitable relationship between different levels of government. Intergovernmental mechanisms, both formal and informal, like Inter-State Council, National Development Council, Zonal councils, Chief ministers conferences, Governing Council of NITI Aayog, GST Council etc should be strengthened to ensure the spirit and working of Collaborative Federalism.*

Keywords: Federalism, executive federalism, inter- governmental relations, NITI Ayog, GST Council, Inter-State Council, cooperative federalism, collaborative federalism

Introduction

Intergovernmental ties represent a pervasive aspect of federal systems, however occasionally undervalued. Notwithstanding variances among federations, it is inevitable that there would be significant

interplay between different levels of government. Intergovernmental connections constitutes a fundamental aspect of the implementation of federalism. The various ways in which different levels of government interact within a federation encompass both cooperative mechanisms and processes, as well as more contentious dynamics like as tension, collusion, competition, control, and even coercion. Intergovernmental relations (IGR) play a crucial and indispensable role within any federal system, serving as a source of tension or conflict akin to oil or friction inside a complex machinery of governance. (Poirer and Saunders, 2015)

The term "intergovernmental relations" encompasses a diverse range of interactions between different levels of government. The interaction among federal partners encompasses several dynamics, such as negotiation, conflict, competition, coercion, and collaboration. The term "executive federalism" is occasionally employed in federal literature to denote a concept that can be described as integrated. Furthermore, it is employed to delineate the pervasive occurrence of interactions between federal counterparts predominantly being managed by the executive branches of their various tiers of governance. (Ibid.)

The nature of Intergovernmental Relations in India has predominantly been characterized by "executive federalism" rather than "legislative federalism," with the latter failing to materialize through the Rajya Sabha. In the present setting, it is imperative to analyze the essence of executive federalism in the Indian context.(Saxena, nd)

The prevailing configuration of Indian intergovernmental relations (IGRs) exhibits a greater inclination towards multilateralism rather than bilateralism. Furthermore, it demonstrates a vertical and hierarchical orientation, as opposed to a horizontal one. In the realm of intergroup relations (IGRs), it has been shown that groups have exhibited a dual nature, characterized by both cooperative tendencies and a steady increase in competitive behaviors. While it is true that the consultation process might benefit from institutionalization and enhancement, intergovernmental relations (IGRs) are primarily characterized by their persuasive and consultative nature, rather than being chaotic or forceful. In general, IGRs tend to be informal in nature. It is noteworthy to acknowledge that the constitutional establishment of formal forums, such as the ISC, has hindered their ability to achieve optimal effectiveness.(Saxena, 2021)

IGR in India

The dynamics of interstate interactions cannot solely rely on formal constitutional rules inside any one country. The complexities and uncertainties associated with relationships of significant scope are not easily comprehensible or manageable by a strict legal framework. The inherent characteristics of the issues necessitate the possession of flexibility and adaptability in order to effectively respond to

dynamic circumstances and achieve the objectives outlined by both tiers of governance. The Indian experience serves as a comprehensive demonstration of this phenomenon.

The Indian government has exhibited varying strategies over time in relation to Article 263 of the Constitution, which outlines the provision for the creation of an Inter-State Council (ISC) when it is deemed by the President to be beneficial for public interests and the promotion of cooperative inter-governmental relations.(Saxena, nd)

Scholars analyzing the Indian federal landscape have generally reached the consensus that intergovernmental relations, particularly through official channels, have not been particularly prominent either during the period of one-party dominance under the Indian National Congress or in the era of multi-party coalition governments since 1989. This conclusion exhibits both accuracy and inaccuracy. The lack of official routes for intergovernmental communication does not imply a complete absence of such relations. Later in this discourse, I contend that there exist formal, informal, and non-obvious mechanisms of intergovernmental relations that necessitate comprehensive examination and analysis, encompassing even unconventional and covert processes.(Ibid.)

In the realm of comparative federal theory and practice, there are two prominent models for the implementation of Intergovernmental Relations (IGR). These models are legislative federalism, which is facilitated through the involvement of the federal second chamber, and executive federalism, which relies on intergovernmental conferences between executive leaders from both levels of government. The initial model can be observed within presidential federations such as Switzerland and the United States. In Switzerland, this is exemplified by the Council of States (Ständerat), which possesses equivalent powers to the National Council (Nationalrat), the primary national chamber. Similarly, in the United States, the Senate holds greater authority compared to the House of Representatives, serving as the principal national chamber. Notably, both systems ensure equal representation for all constituent units. While it is not necessarily the case that executive leaders from both levels of government in presidential federations convene to deliberate on intergovernmental relations (IGRs), Swiss Councillors and US Senators, serving as effective and equitable representatives of their respective cantons/states, have emerged as the primary or at least relatively equal advocates for their constituents and governments vis-à-vis the federal authorities.(Saxena, 2021)

In a federal system, it is imperative to have intergovernmental interaction across the several tiers of government, namely the municipal, state, and federal levels. Therefore, it is evident that the aforementioned structure need an intergovernmental mechanism. Due to their adherence to conventional

notions of dual sovereignty, the architects of early federal constitutions did not foresee the need for interstate forums.(Ibid.)

In contrast, the architects of the Indian Constitution did actually foresee the imperative need for intergovernmental forums inside the federal structure. The proposal to establish a forum during the Constituent Assembly deliberations received widespread consensus. The formation of typically informal venues for intergovernmental cooperation in India has been largely assisted by the initiative of the union government, resulting in positive outcomes. There also exist comparable advisory boards and national councils across various significant policy domains. (Singh and Saxena, 2011)

Inter- State Council

The unexpected occurrence of the eleventh meeting of the Inter-State Council (ISC) on July 16, 2016, following a ten-year hiatus, was somewhat surprising. The unexpected postponement of this assembly is notable in light of Narendra Modi's emphasis on the concept of "cooperative federalism" throughout the 2014 electoral campaign. During the convening of the ISC meeting, Prime Minister Modi characterized the forum as a highly significant venue for enhancing the relationship between the central and state governments, as well as facilitating inter-state cooperation and policy deliberations. In order for a federal system to function effectively, it is imperative to have robust relationships among the several tiers of government, specifically the central government, state governments, and local governments. Hence, the necessity for an inter-governmental mechanism is readily apparent within this structure. (Saxena, 2016)

The establishment of an Inter-State Council (ISC) was stipulated in Article 263, however, its operationalization was delayed until 1990. The aforementioned situation can be attributed partially to the availability of effective informal alternatives for the ISC, as previously discussed, and partially to the perception of the government that the ISC, being a formal constitutional forum, would be less adaptable compared to the previously utilized informal forums (Saxena, 2006). The establishment of the Indian Statistical Commission (ISC) in 1990 by the administration led by V. P. Singh was a manifestation of the Janata Dal-led National Front's commitment to leveraging the federal provisions outlined in the Constitution. This development coincided with the onset of a phase characterized by coalition governments in New Delhi.(Saxena, 2021)

Paradoxically, the anticipated activation of the ISC did not come to fruition, principally due to two reasons (Saxena, 2002). In this era, coalition governments frequently comprised a notably extensive assortment of political parties, with specific parties assuming leadership roles in state administrations.

Although several state governments obtained direct participation at the regional level inside the federal Cabinet, the Union Cabinet also provided a platform for addressing intergovernmental issues. The ISC was mandated solely for state governments who lacked representation at the federal level. Furthermore, the National Development Council (NDC) maintained its position as the principal platform for the endorsement of economic strategies, a role it held until the period of 2014-2015. (Singh and Saxena, 2011, 2013)

NITI Ayog

In the fiscal year 2014-15, the government led by Prime Minister Modi implemented a significant change by replacing the National Development Council (NDC) and the Planning Commission with the National Institution for Transforming India (NITI Aayog). This new institution introduced a Governing Council, which consisted of the Prime Minister, a panel of experts, certain influential union ministers, as well as the Chief Ministers and lieutenant governors of the respective states and union territories. In contrast to the Indian Statistical Commission (ISC), which operates as a constitutional agency, the NITI Aayog possesses an executive mandate. As of 2023, the Governing Council of the NITI Aayog has convened on six occasions. The platform offers an opportunity to engage in discussions pertaining to inter-sectoral, interdepartmental, and federalism-related issues. Additionally, there are regional councils consisting of Chief Ministers and Lieutenant Governors that are responsible for addressing specific concerns and situations that affect multiple states or regions. (Saxena, 2021)

The enhancement of NITI's influence in matters pertaining to center-state issues can be achieved by the acquisition of substantial discretionary grant-making powers. In this special edition of Seminar, Vijay Kelkar argues that the implementation of NITI Aayog 2.0 might effectively tackle regional development disparities. This is in contrast to the Finance Commission, which primarily emphasizes per capita consumption of essential goods and services rather than infrastructural development. It would be more advantageous to allocate these interests to the NITI rather than the Ministry of Finance, as the latter has historically prioritized concerns related to inflation, balance of payments, and short-term macroeconomic stability. (Swenden, 2019)

Moreover, in order to effectively operate as an authentic intergovernmental entity, it is imperative to modify the internal framework of the NITI. This entails incorporating provisions for state representations within its composition and ensuring a greater degree of independence from the Prime Minister's Office (PMO) or even the central government. A potential model to consider for enhanced autonomy is that of the Election Commission. India's highly centralized federation restricts the opportunities for pursuing 'co-operative' federalism through alternate channels. It is evident that the Rajya

Sabha does not fully achieve its intended purpose of reflecting the interests of the states. The Inter-State Council, the sole statutory entity established to facilitate coordination between the central and state governments, convened only once during the tenure of the Modi government (July 2016) and had convened only once in the preceding decade. In a broader context, it is worth noting that while there are memorandums of understanding in place between central and state governments as well as bureaucracy, these agreements tend to be ad hoc in nature and lack substantial institutionalization.(Ibid.)

The enhancement of inter-governmental procedures is vital for the cohesive functioning of the federal framework. Within this context, there exists a significant imperative to enhance the capabilities of organizations such as ISC, fostering greater interactivity, inclusivity, transparency, and accountability. The Inter-State Council (ISC) has the potential to serve as a highly efficient platform for fostering cooperative federalism.

However, it appears that the prevailing practice for conducting intergovernmental relations (IGR) in India continues to be informal in nature. Intermittent informal conferences among prime leaders, chief ministers, ministers, and officials from both levels of government serve as a means to facilitate the majority of crucial intergovernmental decisions and negotiations. The frequency of said conferences is significantly higher compared to the occurrence of ISC or NDC meetings. Apart from the North Eastern Council (NEC), the zonal councils, which are another set of legitimate intergovernmental forums, are largely non-functional. The sustained operation of NEC can be attributed to its geographical location in a political region of India that exhibits a higher degree of economic interdependence and geographical segregation compared to other macro-regions like South India, the Hindi heartland, or the Northwest.(Saxena, 2021)

Tribunals and Commission

Inter-state river water disputes have emerged as a significant source of tension between states. The Inter-State River Disputes Act was enacted by the Parliament in 1956. This legislation established a mechanism for the resolution of inter-state river disputes by transferring them to a state government tribunal. Additionally, it mandated that the union government must be satisfied that the disagreement in question cannot be settled through political or administrative means. Currently, a total of five tribunals have been established for the Sutlej–Jamuna, Kaveri, Godavari, Krishna, and Narmada rivers. Moreover, it is common for tribunals to send the relevant matter to a commission headed by a retired judge from the Supreme Court.(Singh and Saxena. 2011)

If both the tribunal and the commission fail to resolve the matter, it is then escalated to the Supreme Court. The majority of water issues, excluding those involving Karnataka and Tamil Nadu, Rajasthan and Haryana, and Punjab, have generally been resolved by amicable means. In recent years, the states of Karnataka and Tamil Nadu have been engaged in a contentious conflict over the allocation of water from the Kaveri River, particularly exacerbated during periods of drought. In light of recurrent shortcomings in political settlement, issues are frequently resolved on a temporary basis by the involvement of the Supreme Court. In recent years, the Congress government in Punjab has taken a firm stance against the allocation of water from the Yamuna and the Ravi-Beas-Sutlej rivers. This opposition is rooted in the rejection of inter-state agreements signed in 1981, 1985, and 1994, which were supported by the state legislature through an undisputed resolution. It is important to note that this issue remains a subject of ongoing relevance and contention. Despite the fact that the Kaveri tribunal ruling was issued in 2007, both Tamil Nadu and Karnataka persistently expressed concerns, with Karnataka exhibiting a greater level of unease compared to Tamil Nadu.(Ibid.)

According to the provisions outlined in Article 131 and Article 143 of the Constitution, the Indian Supreme Court serves as the final recourse for the federal resolution of issues. The court exercises its jurisdiction in both original and advisory capacities. Based on existing evidence, it is improbable that there would be a reversal of recent liberal economic reforms. However, the Court's decisions frequently prioritize the planning process, distributive justice, and public investment.

GST Council

The GST Council holds significant prominence as an intergovernmental body within the realm of fiscal federalism. The Goods and Services Tax (GST) is widely regarded as a significant reform in the realm of indirect taxation. It effectively addressed the issue of tax cascading by implementing a unified tax system that encompassed various indirect taxes such as VAT, excise duty, octroi, entry tax, and others. The establishment of the GST Council, as mandated by Article 279A of the Constitution, serves to facilitate effective consultations and coordination between the Central Government and the several state governments. Nevertheless, apprehensions were raised over the authority of the Centre to veto decisions, as it encroaches upon the fiscal independence of the states. Hence, the Select Committee of the Rajya Sabha proposed a reduction in vote weightage from one-third of the total votes cast to one-fourth, as stated in the Select Committee Report on the 122nd Amendment Bill, 2014 (Rajya Sabha Secretariat, 2015). A significant point of contention surrounding the GST Council pertains to its decision-making process and the subsequent implications for federalism. The primary apprehension of states revolved around the potential encroachment of the center on the interests of individual states (Kumar, 2019, p. 83). The efficacy of the voting system, in which one third of the

votes are allocated to the center and two thirds to the states, has come under scrutiny, particularly from larger states who express concerns that smaller states may align themselves with the center. The attention of scholars and legal experts has been drawn to the recent Supreme Court case (*Union of India vs Mohit Minerals*, 2021) regarding the matter of decision-making within the GST Council. The ruling states that the recommendations made by the GST Council are not legally binding on the central and state governments (SC Verdict, 2022).

Solution?

In India, intergovernmental relations (IGR) have exhibited a pattern of either significant centralization, particularly during the period of Congress party control, or substantial peripheralization, particularly during the phase of pre-Modi coalitional rule. The efficiency of the Indian scenario appears to be significantly lower, particularly in comparison to the Intergovernmental Relations (IGR) in Canada. In India, it is common for intergovernmental relations (IGRs) to be structured hierarchically or vertically, rather than being characterized by a horizontal and egalitarian approach. The aforementioned correlation can be readily ascribed to the Constitutional provisions that enable the Center to maintain fiscal supremacy and exert predominant political authority over the states. Similar to many other nations, state governments in India frequently express their dissatisfaction with the central government's failure to adequately consider their opinions and its tendency to unilaterally take actions in relation to international agreements within state and concurrent jurisdictions. State governments also perceive instances where the central government encroaches upon their exclusive jurisdiction under questionable justifications. Despite the emergence of federal coalition governments and the implementation of a national multiparty system, a continuous influx of comparable grievances has endured. However, there has been an increasing demand for consultative intergovernmental relations (IGRs) during this particular timeframe. (Saxena, 2021)

The issue of accountability

In parliamentary federal systems, the inclusion of institutions within executive federalism has faced criticism, particularly in Canada, for its perceived shortcomings in terms of federalism and democracy. (Brock, 2002; Franks, 2002). The aforementioned shortcomings pertaining to executive federalism are frequently recognized within the context of India as well. The Indian constitution does not provide any provision for legislative reference to and approval of decisions made by executive federal entities, whether at the national or state level. (Saxena, 2021)

While Article 263 of the Constitution outlines the concept of executive federalism, it is important to note that the specific details about the collective duty of the ISC, as mentioned in the aforementioned

article, are not extensively articulated. The deliberations around their decisions take place within both the union and state legislatures. However, it is important to note that a parliamentary opinion, no matter how essential, should not serve as the sole grounds for the withdrawal of legislative confidence and subsequent collapse of a government.(Ibid)

There is a notable absence of any state or parliamentary legislature in India having created a committee on Inter-Governmental Relations (IGRs), which raises concerns regarding the accountability of the Indian political and constitutional systems for their decision-making processes (Singh, 2011). The current state of Indian executive federalism does not demonstrate a significant level of development that would support the inclusion of people involvement in key political forums like the ISC, NDC, and the conferences including the Prime Minister and Chief Ministers.

Conclusion and the way forward

From the perspective of executive federalism, it was fascinating to observe India's response to the COVID-19 pandemic through the implementation of 'executive federalism'. This approach involved the convening of conferences by the Prime Minister, which included Chief Ministers and health ministers, as well as the involvement of the National Disaster Management Authority, which operates under a parliamentary statute primarily controlled by the central government. Subsequently, subsequent states were granted increased autonomy, exemplified by their authority in determining the demarcation of infection zones categorized as red, orange, and green. In addition, it is worth considering that states had the option to implement border closures, such as those observed in UP, Haryana, and Karnataka, as a means to limit the influx of individuals from other states, so mitigating the spread of the outbreak. (Saxena, 2021)

Thus, if we look at India's federal response to COVID-19, it can be said that despite several limitations and inadequacies, Indian federalism, particularly intergovernmental relations (IGR), can be characterized as relatively functional and reasonably effective, with the possibility for further achievements. The concept of federalism involves achieving a delicate equilibrium between centralized governance and regional autonomy, considering the significant influence of intergovernmental relations on federal systems. Nevertheless, there is still considerable progress to be made in effectively promoting agreement among constituent states, with a gradual improvement in the likelihood of achieving greater efficiencies. Political decentralisation has undergone significant expansion in contrast to fiscal and economic decentralisation.

In relation to the prospective trajectory of Indian intergovernmental relations (IGR), there exist two distinct yet interconnected viewpoints and projections. The first perspective posits that the involvement of the central government is diminishing, as seen by a reduction in public investment, mostly

attributed to the introduction of neoliberal economic reforms (Singh & Saxena, 2015). State governments are being urged to enhance their own resources by depending on private investments and generating additional revenues. The need of implementing state changes is underscored, as it is widely regarded as essential for the economic policy paradigm to undergo a second-generation neo-liberal transformation. The reduction of the union government's capacities and autonomy, resulting from the seemingly contradictory forces of localisation and globalization, also referred to as 'glocalisation', has led to a growing decentralisation of intergovernmental relations (IGRs) within the federal system. In contrast, it has been argued by some that the prevailing pattern of the IGR has encountered significant obstacles as a result of capitalism globalization. While this globalization has to some extent facilitated a reversal in average economic growth, it is likely that an increased number of jurisdictional divergences will be unavoidable. Another perspective commonly held by political commentators in India, particularly those with social democratic or Marxist inclinations, is the concern that the federal system may not uphold equitable principles and may neglect the promotion of welfare and the reduction of local inequalities, as it has done in the past. While it is evident that both these prognoses and opinions may be somewhat exaggerated, it is not appropriate to simply disregard or discard them. In my assessment, it is expected that the Indian Inter-Governmental Relations (IGR) will conform to the framework set forth by the Indian accommodative federal democracy, in line with the provisions of the Constitution and in accordance with necessary adaptations to address the challenges posed by political ideologies in governing.

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