



## COOPERATIVE FEDERALISM IN INDIA AND COVID-19

*The pandemic has effectively revived and strengthened the federal spirit in India's response to the health crisis. The concerted effort by the Union and state governments respectively have been applauded by the United Nations and the World Health Organization. The post-lockdown measures have been successful to the extent of being appreciated by the International Monetary Fund in terms of India's economic recovery. The cooperative and coordinated Centre-state approach towards the Covid-19 vaccination also demands appreciation. On the whole the pandemic has regenerated cooperative federalism in India with promise of collaborative governance in the future.*

**D**aniel Elazar observed: 'Federalism is more than an arrangement of governmental structures; it is a mode of political activity that requires the extension of certain kinds of cooperative relationships throughout any political system it animates.'

The federal tradition in India predates the political institutions of the British period. One of the major governmental arrangements innovated by the British administration was the federal political institutions in the first half of the twentieth century. The Government of India Act of 1935 specifically sought to formalize the federal system of government. The groundwork to the Constitution was intensively done by standing/ *ad hoc* committees/subcommittees, seven of which dealt with federal concerns plus the omnibus drafting committee which dealt with it. The federal model which resulted from the Constituent Assembly deliberations reflected the efforts of the framers of the Indian Constitution at nation-building and to prevent further rupture of the newly formed Indian nation. The Constitutional design for a federal institution enshrined a pattern of power sharing between a Central government and regional governments that was protected by a written Constitution. The model adopted in India is professed as 'cooperative federalism', centred on the belief that the Union and state governments should be interdependent.

The functioning of the Indian federal system led to it being considered as an integral part of the 'basic structure' of the Constitution of India by the Supreme Court in *S.R.Bommai v. Union of India, 1994* and *Kuldip Nayar v. Union of India, 2006*. The constitutional expert, Durga Das Basu, after a fairly extensive analysis of the judgements of the Supreme Court of India, opined that the Indian Constitution is neither purely federal nor purely unitary, but it is a combination of both. According to him, it is a union or a composition of a novel type.

Cooperative federalism is a concept of federalism in which national, state and increasingly local governments interact cooperatively and collectively to solve common problems, rather than making policies separately. The most essential precondition for effective functioning of a cooperative federalism is robust institutions and mechanisms for promoting intergovernmental relations. Article 1 of the Constitution states India is the Union of States. The Constitution specifies the functional domains of the Union and states. The Constitution has clearly demarcated the jurisdictions, powers and functions of the Union and the state governments and has specifically distributed the legislative, administrative and financial relations between the Union, states and local bodies. However, the Constitution of India does not explicitly contain the phrase 'cooperative federalism' but the functioning of the Constitution implicitly resulted in a constitutional order which is observed by A.H.Birch as 'cooperative federalism.' Constitutional law expert Granville Austin opined that despite a strong Centre, cooperative federalism doesn't necessarily result in weaker states; on the contrary it contributes to the progress of the republic. The phrase was also mentioned in the Sarkaria Commission Report (1988) on Centre-state relations. The Report stated: By the middle of the twentieth century, federalism had come to be understood as a dynamic process of co-operation and shared action between two or more levels of government, with increasing interdependence and Centrist trends. The framers of the Constitution took due note of these changing concepts and functional realities. Avoiding a dogmatic approach, they fashioned a *sui generis* system of two-tier polity in which the predominant strength of the Union is blended with the essence of co-operative federalism. (Government of India 1988, Chapter 1, clause 1.3.28).



The inter-governmental cooperation is key to effectively respond to any crisis or disaster. The disaster management strategies constitute an integral part of India's public policy framework as predominantly the poor people are more vulnerable to the impact of any exigency or disaster. Any disaster demands State intervention through governmental initiatives and emergency plans. These initiatives define the areas of intervention at the national, sub-national (states) and local (district & below) in accordance with the blueprint of disaster control.

Pandemic is an epidemic of infectious disease that has spread across a large region, which occurs to the human population or animal population and may affect the health and disrupt services with high economic and social costs. The closing months of the year 2019 witnessed the spread of the COVID-19 which belong to category of viruses that cause illness such as respiratory disease or gastrointestinal diseases. The subsequent rapid spread of the disease from China to the European continent and then eventually to the America, Asia and other parts of the world required the World Health Organization (WHO) to advise and recommend necessary precautionary measures to lessen the impact of the pandemic. The UN has highlighted the large-scale coordinated and comprehensive health response, guided by the WHO which aims to suppress transmission of the virus, reduce mortality and develop vaccines, diagnostics and treatments that must be available to all. The alarm set by the United Nations and its specialized agency sets appropriate circumstances for governmental intervention. The governments worldwide mostly attempted to control the COVID-19 pandemic with Non-Pharmaceutical Interventions (NPI).

For India, COVID-19 is the first pan India biological disaster which is being handled by the legal and constitutional institutions of the country. The nation-wide lockdown was imposed in India under the Disaster Management Act, 2005 (DM Act). The legal basis of the DM Act is Entry 23, Concurrent List of the Constitution "Social security and social insurance". Entry 29, Concurrent List, "Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants," can also be used for law making in this regard. Thereby all tiers of government including the third-tier institutions such as municipal and rural local bodies are empowered to contribute in disaster management and mitigation activities. The legislative purpose of the DM Act was to, "provide for the effective management of disasters". The nodal central body under the DM Act for coordinating disaster management is the National Disaster Management Authority (NDMA) with the Prime Minister as its Chairperson. The NDMA lays down policies, plans and guidelines for management of disaster. Simultaneously Disaster Management Authorities were established at the State, district and local level. These agencies are envisaged to function in coordination to effectively achieve the objectives of the DM Act. The NDMA issues guidelines for the management of disasters from time-to-time, one of which is the 2019 National Disaster Management Plan which extensively covers Biological Disaster and Health Emergency. The NDMA has empowered both the Central and state governments to impose lockdown and regulate the movement of people and goods nationwide. The NDMA Act proposes the creation of a 'National Plan' under Section 11 as well as the issuance of binding guidelines by the Centre to the state governments under Section 6 (2), in furtherance of the 'National Plan'. The Plan is a broader vision document while the binding guidelines are its enforcement mechanism. Section 11 (2) of the Act mandates state consultations before formulating a 'National Plan', and to that extent when the binding guidelines are ultimately issued under the Plan, they are expected to represent the perspective of the states. However, the Centre has preferred to respond to COVID-19 through *ad hoc* binding guidelines issued to the state governments leading to resultant circumventing the legislative mandate of state consultations. This selective application of the Act serves to concentrate all decision-making powers with the Union government.

The unilateral imposition of the nationwide lockdown by the Centre was eventually followed by the course of action in which the Centre eventually chose to work with the state governments. The state chief ministers also extended their full cooperation in working with the Centre and other state governments to address the varied challenges created by the pandemic. The exigency response by the India's federal institutional mechanism had the potential of strengthening the federal polity. This pandemic brought the cooperative spirit of Indian federalism to the forefront which confirms Granville Austin's view.

Besides the DM Act, the state governments have used the Epidemic Diseases Act, (EDA)1897 and other state specific Public Health Acts and advisories, for example, the Tamil Nadu Public Health Act, 1939 to limit the spread of the transmission of the corona virus. The 1897 EDA permits both the central and state governments to control the spread of epidemic diseases. The centre can take preventive emergency measures to control



epidemic diseases at ports of entry and exit while the states are constitutionally empowered to adopt preventive administrative and regulatory measures to impede the spread of the epidemic. Under this 1897 Act, the states are empowered to impose restrictions on mass gatherings, shutdown recreational activities and educational institutions and can order businesses to work from home. Once the full lockdown was imposed, the state governments were directed by the Central government to invoke Section 2 of the EDA, 1897. The Union Ministry of Health and Family Welfare, the nodal Ministry for biological disaster issued 'Containment Plan for Large Outbreaks (COVID 19). Several states accordingly issued COVID specific regulations to manage the spread of the infectious disease. Few states have invoked legislative power under specific Entries of State List, for example, Kerala under Entry 6 (Public health and sanitation) of the State list issued 'Kerala Epidemic Diseases Ordinance, 2020'. Overall, States also have enough legal power to manage this biological disaster including punishments for disobeying order of a public servant and malignant act likely to spread infection of disease dangerous to life (Ss 188 & 270 IPC respectively).

India in its fight against the pandemic imposed a countrywide lockdown to prevent community transmission. The COVID19 response tracker by the University of Oxford's Blavatnik School of Government termed India's lockdown a perfect 100% in the world. This should be credited to the practice of the principle of cooperative federalism by the Union government and the respective state governments. Health is a subject in the State List and infectious disease control is a subject in the Concurrent list but the union and state governments under the Epidemic Diseases Act (EDA), 1897 and the National Disaster Management Act (NDMA), 2005 extended a joint and collaborative effort.

India's federal response to the COVID19 pandemic is marked by close collaboration and cooperation between the union and state governments. This is all the more tangible from the innovative ways of the dealing with COVID devised by the state governments commensurate with their local conditions. The mitigation measures taken by the state governments in certain instances preceded those taken by the Centre represents the coordinated and collaborative efforts made in concert by the Union and the state governments to obstruct the spread of the virus. The virtual conferences between the Prime Minister of India and the chief ministers of the states symbolize the spirit of cooperative action by the multi-level governance mechanism in India towards containing the COVID 19 pandemic.

The uniformity of action has strengthened cooperative roles played by the union and the state governments respectively to ensure the enforcement of lockdown and their gradual relaxation. This coordinated approach has been successful in keeping with the fatality rate owing to COVID low in India particularly during the first wave of the pandemic. There is no dilemma that the COVID-19 pandemic has cogently put the federal design and inter governmental mechanisms to test specifically with respect to its efficacy in the reduction of friction and ensure cooperation in emergency situations. On the contrary, India's strong Central federalist tendency ensures a significant role for the Union government in terms of allowing it to generate a rapid national response with determined cooperation from the states to hinder the spread of the corona virus. ■

## REFERENCES:

1. Tillin, L (2019). Indian Federalism. New Delhi. Oxford University Press.
2. Singh, M.P. & Saxena, R (2013). Federalizing India in the Age of Globalization. New Delhi. Primus Books.
3. Jain, M.P. Indian Federalism: A Background Paper. Retrieved from <http://14.139.60.114:8080/jspui/bitstream/123456789/688/23/Indian%20Federalism.pdf>
4. Coronavirus disease (COVID19). Retrieved from [https://www.physio-pedia.com/Coronavirus\\_Disease\\_\(COVID-19\)](https://www.physio-pedia.com/Coronavirus_Disease_(COVID-19))
5. Guterres A. (2020). Stronger health systems and Universal Health Coverage must be a priority. Retrieved from <https://www.un.org/en/coronavirus/stronger-health-systems-and-universal-health-coverage-must-be-priority>.



6. Brauner. J.M., Minderman.S., Sharma. M., Johnston.D & others. (2020). Inferring the effectiveness of government interventions against COVID19. Retrieved from <https://science.sciencemag.org/content/early/2020/12/15/science.abd9338>
7. Verma.P & Joshi.S (2020) Reaffirm Cooperative Federalism. Retrieved from <https://www.thehindu.com/opinion/op-ed/reaffirm-cooperative-federalism/article31567966.ece>
8. Chokkakula. S. (2020). India's response to COVID-19 reflects the power, problems, potential of federalism. Retrieved from <https://indianexpress.com/article/opinion/columns/coronavirus-covid-19-pandemic-and-federalism-6600329/>
9. Ram Mohan. M.P. & Jacob. (2020) COVID-19 & the ambit of Disaster Management Act. Retrieved from <https://www.theweek.in/news/india/2020/04/26/covid-19-and-the-ambit-of-the-disaster-management-act.html>.
10. Sahoo.N. (2020). COVID-19 & cooperative federalism in India: So far, so good. Retrieved from <https://www.orfonline.org/expert-speak/covid19-cooperative-federalism-india-so-far-good-65429/>
11. Saxena. R. (2020) Federalism and the COVID-19 crisis: Centre-State apposite relations in Pandemic Federalism-India. Retrieved from <http://www.forumfed.org/wp-content/uploads/2020/04/IndiaCOVID3.pdf>
12. Sahoo.N. (2020). India and Australia's federal systems have responded fairly well to COVID-19. But the US system hasn't. Retrieved from <https://www.orfonline.org/research/india-and-australias-federal-systems-have-responded-fairly-well-to-covid-19/>

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