



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Cooperative Federalism under the Indian Constitution and Advent of COVID-19: Issues and Challenges

Arnav Ashtikar^a

^aSymbiosis Law School, Nagpur, India

Received 18 December 2022; *Accepted* 30 December 2022; *Published* 04 January 2023

The Covid-19 pandemic and its ramifications provide issues for India's cooperative federalism, which is put to the test. An extraordinary public health disaster, the COVID-19 pandemic has sparked an unparalleled reaction. To "flatten the curve" and prevent our health systems from being overburdened, drastic and hitherto inconceivable measures have been adopted. The epidemic has highlighted the potential and boundaries of cooperative federalism in the absence of a coordinated national response to the catastrophe. The Cooperative Federalism practised in India has significant centralising tendencies. The reaction to a catastrophic outbreak is not specifically addressed in the Indian Constitution. The unitary tilt and the strong central bias in the Indian federal system were made clear during the phases of the pandemic response. Cooperative federalism also seems to be discernible in the later phases of this crisis. However, the inability of the States to work together and the Centre's failure to promote horizontal federalism without using an intergovernmental organisation to do so have made migrant workers' life unpleasant. Federalism, which promotes shared territoriality and sovereignty among its many constituent divisions of government, was expected to fall short in the face of a large epidemic that required an immediate and centralised reaction. This essay analyses the recent experience of the Indian federal government. The objective of this paper is to understand the nature and scope of India's pandemic response as well as the issues that the nation has faced in light of its federal structure.

Keywords: *cooperative federalism, covid-19, pandemic, unitary tilt, central bias.*

INTRODUCTION

In a federal state, the structure of intergovernmental connections is dynamic and continually seeking a new equilibrium in response to the centripetal and centrifugal forces at work in the nation. Federalism is a form of governance in which regional and national governments are depending on one another politically. A federation is created when many states voluntarily band together or associate with one another to create a strong, cohesive political body.¹ The distribution of powers between the Union and the States, or levels of government, is necessary under a federal framework.² This distribution of authority between the Centre and State is an essential component of the Federal system because it prevents conflict and disorder between the two domains. The political units fuse voluntarily to form a state with a single sovereign central authority while still being able to retain their regional identities and benefits. Despite the dominance of the separate governments in their domains, cooperation and concord are necessary for the smooth operation of a federal system.³ With the constitutionally mandated Central Government and the State Government and with constitutionally distributed and demarcated powers, the Constitution of India established a dual polity, a two-tier governmental structure.⁴ A government has the right to act in the area that it has been given; it is not permitted to go outside of that area or trespass on the area given to another government.

The COVID-19 epidemic exposed the advantages and disadvantages of all political systems and structures during the preceding year and a half, including democratic and authoritarian; unitary and multiparty. The COVID-19 pandemic has had a significant effect on world governance. Governmental and healthcare systems have been put to the test as a result of the COVID-19 outbreak over the world. The Union (central) and state governments' tight coordination and cooperation have been a significant aspect of India's response to the COVID-19 epidemic. The epidemic has given the federal government the authority to implement significant changes in

¹ Sudepta Adhikari, 'Some Aspects of Indian Federalism: A Study in Political Geography' (1986) 07 Singapore Journal of Tropical Geography 1

² V N Shukla, *The Constitution of India* (13th edn, EBC 2008) 794

³ Dr. Pradip Banerjee & Pritam Banerjee, 'Application of Cooperative Federalism in India during Covid-19 Pandemic', (2021) 04 INTL J L MGMT & HUMAN 1485, 1489

⁴ Dr. R Bagri, 'An Analysis of Nature of Indian Federal System', (2019) 08 INTL J HUMAN & SOC SCI INVENTION, 2319, 2392

sectors like agriculture, healthcare, and other ones that are often seen as the province of the states.⁵

In India, like in the majority of federations, the constitution designates state governments as having a duty for providing healthcare. The constitution calls for the Union government to take the lead in collaborating with and assisting the states in exceptional situations, such as the COVID-19 epidemic. India's response to the COVID-19 epidemic has altered the balance of its political system.

UNDERSTANDING THE TRUE ESSENCE OF 'FEDERALISM'

Federalism is based on the understanding that restricting the size and reach of the federal government is the best way to protect our political liberty. Federalism is a complex and sophisticated system of government that helps a nation be governed. Federalism, as a concept, has developed to bring or bind together several autonomous, independent, separate, and divergent political entities or administrative divisions under one political union.⁶ It aims to strike a balance between the forces promoting the centralization of power and those calling for its distribution across several units. Thus, it aims to harmonise nationalism with localism, centralization with decentralisation, and unity with diversity.⁷ "Federalism" stems from the Latin word "Foedus," which is a direct translation of the English words "accord" and "treaty."⁸ This etymology dates back to the union of the American states, which is considered to be the first structural federation in modern times and the model for how most federal governments are structured today.⁹ The uniqueness of the federal system is seen in how power and authority are both distributed and centralised at the same time. In some ways, administration and law are more centralised, but in other ways, they are more decentralised.¹⁰

⁵ Priyanka Dadhich & Faiz Ayat Ansari, 'Indian Federalism In The Era Of Covid-19: Balancing Between The Issues And Challenges' (2022) 02 INDIAN J INTEGRATED RES L 01, 03

⁶ MP Jain, *Indian Constitutional Law* (8th edn, Lexis Nexis 2018) 690

⁷ Dr. Mukesh kumar, 'Nature of Indian Federalism: An Analysis of Historical Basis and Problems', (2018) 07 INTL J HUMAN & SOC SCI INVENTION 42, 43

⁸ Dhruv Kaushik, 'The Paradox of Indian Federalism' (2021) 07 J CONTEMP ISSUES L 35, 36

⁹ *Ibid*

¹⁰ Jain (n 6)

Federalism implies the division or distribution of political and constituent power, i.e., the authority to govern at two (or more) levels, however, municipal governments may exist inside a state as well. A federal constitution creates a dual polity since it (generally) has two tiers of government. There is a Central Government that, at one level, has control over the entire nation as well as every person's person and property there. The regional governments (state governments in India) each of which has jurisdiction over one of the regions or administrative entities into which the nation is split under the constitution operate at a lower level. All governmental duties and authority are divided and shared between the two levels of government.¹¹ D.D. Basu believes that *"the most crucial element, or better still, the very foundation, of any federal system is the division of legislative authority between the central government and the states."*¹² In actuality, this fundamental power allocation principle is the hub around which the whole federal government revolves. Thus, a federal constitution envisions a division of governmental duties and authority between the national government and the states, which is authorised by the Constitution, which is often a hard-written instrument that cannot be amended easily.¹³ Every federal system needs to divide authority between the federal government and the state governments, who must both be sovereign in their own right and independent of one another. The divide of authority between the federal constitution's centre and the States is one of its most significant elements because it prevents instability and conflict between the two contending authorities.¹⁴ William Livingston argues that Federalism is more of a "functional" than an "institutional" idea, and any theory that claims that a political system cannot be federal without having a set of rigid requirements fails to take into account the fact that "institutions are not the same things in different social and cultural environments."¹⁵

As a result, even if the manner of distribution may vary amongst federal Constitutions, the fundamental purpose for which a federal State is founded entails a split of authority between the Federal Government and the States. Basu draws an analogy to say that, *"just as a business*

¹¹ Dr. JN Pandey, *Constitutional Law of India* (59th edn, Central Law Agency 2022) 18-19

¹² DD Basu, *Introduction to the Constitution of India* (25th edn, Lexis Nexis 2021) 213

¹³ M. Asad Malik, 'Changing Dimensions of Federalism in India: An Appraisal' (2019) 02 ILI L REV 85, 86

¹⁴ Basu (n 12)

¹⁵ William S Livingstone, *Federalism and Constitutional Change* (OUP 1956) 6-7

receives its existence from the grant of a legislation by which it is constituted, a federal State derives its existence from the Constitution."¹⁶ Every power, whether it is administrative, legislative, or judicial, and whether it is a part of the federation or one of the component States, is subject to and controlled by the Constitution which is supreme, rigid, and generally written in a federation.¹⁷ The legal supremacy of the Constitution in a federal state is necessary for the federal system to function. It is essential to maintain the power distribution between the two tiers of government, the Federal Government, and the States. This is made possible by giving the courts the last say in how the Constitution should be interpreted and the authority to declare unconstitutional any action taken by the Federal, State, or one of their several institutions.¹⁸

The constitution governs how the different parts of a federation operate, and only a constitutional amendment—a constituent process—can modify how those parts of a federation operate. Normally, this cannot be done at the sole initiative of the federal government. Therefore, the units in a federation have their own unique identities and personalities as well as independent roles to play from the federal government. A Federation is created when many states voluntarily band together or associate with one another to create a strong, cohesive political body. The political units fuse voluntarily to form a state with a single sovereign central authority while still being able to retain their regional identities and benefits.

INDIAN FEDERALISM: A STRONG CENTRALIZING TENDENCY

Three pillars stand at the foundation of the Indian federal system's structure viz a "*strong central government, a flexible federal system, and cooperative federalism*".¹⁹ The reader will through this article understand that the word "federalism" in this context has two opposed interpretations, one of which implies a stronger central government and the other a smaller one. One argument is that India is an example of a "holding together federation," in which a vast country decides to split its authority between the union and the state.²⁰ A "coming together federation" is created

¹⁶ *Ibid*

¹⁷ Anusha Pal, 'Analysis on 'Cooperative and Competitive Federalism' In India', (2022) 02 INDIAN J INTEGRATED RES L 01, 02

¹⁸ Dr. Chanchal Kumar, 'Federalism in India: A Critical Appraisal', (2014) 03 J BUS MGMT & SOC SCI RES 31, 33

¹⁹ Jain (n 6) 692

²⁰ Pritika Tiwari, 'Study of Federalism' (2021) 04 INTL J L MGMT & HUMAN 1444, 1445

when a few nearby provincial units “*voluntarily band together to form a strong union.*”²¹ Another argument is that Indian Federalism is federalism marks a departure from the classic notion of federalism since it established a strong centre. M.P Jain, an eminent scholar on this topic believes that “*the flexibility of Indian Federalism resides in the constitutional measures taken to reduce the rigidity of a federal system and to temporarily expand the powers of the Central Government if the time calls for it.*”²² Some jurists and academicians are critical and tentative to describe the Indian Constitution as a federal constitution because, in their understanding, the Constitution in exceptional circumstances gives the Centre the authority to meddle in state affairs, placing the States in a submissive or subordinate position that goes against the federal ideal.

In the opinion of the researcher, because there is no universally accepted definition of a federal State, any discussion on federalism is complicated. The second problem is that when discussing the topic, researchers and scholars on the topic typically begin with the model of the federation in the United States, which has the oldest federal constitution in the world (1787), and then exclude from the term “federation” any government that does not follow that model. But several nations have enacted constitutions with federal aspects after 1787, and if the stringent historical criteria of the United States are applied to all of these later constitutions, only Switzerland and Australia may pass the test of federalism.²³ The exclusion of so many modern constitutions from the federal class, however, achieves little as traditional political scientists traditionally classify constitutions as either unitary constitutions or federal constitutions. Therefore, if a constitution combines elements of both types, the only option is to examine those elements to determine whether it is fundamentally unitary or federal, while there may be minor changes or aberrations from the ideal model of the federation.²⁴ From the above, the researcher humbly submits that Indian Federalism is fundamentally federal, though it has striking unitary features. The infamous categorization of the Indian Federation as “quasi-federal” by K.C. There needs to be analysed. The mode of formation needs to emphasize rather than the structure of federal polity. For instance, in the United States, the States were hesitant to cede their sovereignty beyond what

²¹ *Ibid*

²² *Jain* (n 6) 692

²³ *Basu* (n 12)

²⁴ *Ibid*

was required for the construction of a national government to serve their common interests since they had an autonomous and sovereign existence previous to the formation of the federation. Such was not the scenario in India. It is again emphasized here that a system would technically become quasi-federal if it deviated from the American model of the true federation; in such a case, the Canadian system would be hard-pressed to avoid the same label.²⁵

The interplay of formal constitutional institutions with historical, social, and economic structures and processes has also contributed to the development of the federal and political systems in India.²⁶ The allocation of authorities and responsibilities between the Centre and the States is very carefully laid out in the Indian Constitution. The trends in the distribution of powers between the tiers of governments in other federations were duly inspected and noted by the fathers of the Indian Constitution. They also divided up duties between the centre and the States in a fashion that suited the nation's unique needs while keeping all of these criteria in mind. Schedule 7 of the constitution there are three lists in India: the Union, State, and Concurrent lists.²⁷

The purpose or scheme of the Constitution is to ensure that a strong central government that has sufficient authority to uphold and defend the nation's unity and integrity. Indian federalism can be understood as a prefectorial federal system in certain ways.²⁸ H. M. Rajashekara believes that *"in a prefectorial federal system, the federal (central) government has vast and sweeping authority and in addition to commanding and controlling the states or provinces, it also can curtail their autonomy and to remove their governments."*²⁹ Article 3 of the Constitution of India gives the Parliament the power to create new states or redraw the borders of any existing state without first receiving the approval or approval of that state and this power is exercised by a simple majority.³⁰ The provisions in Article 3 take into account the Constitution's provision for future readjustment of

²⁵ *Ibid*

²⁶ Roshni Duhan, 'Federal System in India and the Constitutional Provisions', (2017) 05 INNOVARE J SOC SCI 01, 01

²⁷ Constitution of India 1950, sch VII

²⁸ HM Rajashekara, 'The Nature of Indian Federalism: A Critique' (1997) 37 ASIAN SURVEY 245, 246

²⁹ *Ibid*

³⁰ Constitution of India 1950, art. 3

the component States' territory.³¹ Unlike the majority of federations, the Indian federation's residuary powers are centralised under Article 248.³² According to Article 249, parliament may pass legislation about any issue listed in the state list and described in a resolution of the Council of the States (Rajya Sabha) with the approval of two-thirds of the members of the Council of the States.³³ Emergency provisions under article 352 and 356 read in conjunction with Article 250 helps us infer that the Constitution of India marks a departure from the otherwise federal structure of the Constitution.³⁴ Even though the federal system is meant to be used in everyday situations, the peculiarity of the Indian Constitution lies in the fact that it permits the federal government to have the authority of a unitary system in times of emergency.³⁵

COOPERATIVE FEDERALISM- A WAY TO MITIGATE THE CENTRAL BIAS OF INDIAN FEDERAL POLITY

The concept that the centre and other states should have a solid, strong tie and connection lies at the core of Indian cooperative federalism.³⁶ It is a kind of federalism where national, state, and local governments work together collaboratively to solve problems rather than establishing policies independently but roughly equally or arguing over a policy under a system where the central government is in charge.³⁷ The state and the centre are positioned side by side. Instead of establishing policy, they work together to solve an issue. The idea of "cooperative federalism" enables the divided jurisdiction of the federal government to function as a whole. It reduces conflict and encourages cooperation between the different federal union constituent governments so they may combine their efforts to accomplish certain national objectives. It has been realised that the many administrations within a federation are interdependent and should

³¹ *Pandey* (n 11)

³² Constitution of India, art. 248

³³ Constitution of India, art. 249

³⁴ Constitution of India, art. 352, 356 & 250

³⁵ *Basu* (n 12)

³⁶ Vaishnavi Singh, 'A Study of Cooperative Federalism' (2021) 04 INTL J L MGMT & HUMAN 2951, 2955-2956

³⁷ *Tiwari* (n 21)

operate in coordination rather than opposition to advance and maximise the welfare of the population.³⁸

Therefore, the idea of “cooperative federalism” has given an otherwise inflexible constitutional structure the essential flexibility and resilience to enable it to meet the recently rising needs and problems. Due to the varied fiscal capacities of state and local governments, federal involvement in state operations is necessary to provide some uniformity in the provision of public services to people in both wealthy and underdeveloped states.³⁹ By requiring state and local governments to satisfy minimal federal standards, the problem of collective action is eliminated, which prohibits state and local governments from increasing regulatory requirements out of fear of being penalised if others do the same. In a horizontal relationship when they work together for the greater good of the public, the Centre and the States are said to be participating in cooperative federalism.⁴⁰ Constitutionally, the Central Government and the States Government must function in coordination together on the matters affecting public health and enumerated in the Constitution. This system of federalism guarantees that States actively participate in the formulation and execution of national policy and is a fundamental component of the Constitution. By refusing to cooperate in a federal plan, States may demand that the Union find a legal manner to accomplish its stated goal to uphold their oaths. On this issue, new institutional rules can be quite essential. States have historically limited their cooperation with the federal government on divisive matters, and India is hardly the first democracy to do so.⁴¹ The development plans that NITI Aayog established to show that the federal concept in India adopts both the cooperative and the competitive model.⁴²

³⁸ Jain (n 6) 692

³⁹ Singh (n 36) 2952

⁴⁰ Yojana Sonkusare, ‘Model of Cooperative and Competitive Federalism in India: The Goods and Services Tax Law, Challenges In the 21st Century and the Way Forward’ (SSRN, 26 August 2022) <<https://dx.doi.org/10.2139/ssrn.4201328>> assessed 16 December 2022

⁴¹ Malavika Prasad & Aymen Mohammed, ‘Towards cooperative federalism’ (*The Hindu*, 04 February 2020) <<https://www.thehindu.com/opinion/lead/towards-cooperative-federalism/article30729075.ece>> assessed 14 December 2022

⁴² Ragini Agarwal, ‘Achieving Coordinated Action through Inter-State Cooperation’ (*Law School Policy Review & Kautilya Society*, 08 August 2020) <<https://lawschoolpolicyreview.com/2020/08/08/achieving-coordinated-action-through-inter-state-cooperation/>> assessed 13 December 2022

India's states have a wide range of administrative and decision-making responsibilities, so it is crucial to establish organisations to coordinate intergovernmental action, at the very least in those areas where a State's decision could have effects outside of its borders or where national interests call for a unified approach.⁴³ Generally, the inherent authority to regulate in the interest of the public health, safety, and welfare of their citizens is granted to the states under our federal constitutional framework.⁴⁴

THE COVID-19 PANDEMIC AND CO-OPERATIVE FEDERALISM

A global catastrophe without precedent was the COVID-19 pandemic. The coronavirus outbreak has generated unprecedented responses from national governments. It is among the biggest public health catastrophes in a century and the first of its scale in the modern, globally interconnected world. Social media and the widespread availability of 24-hour news coverage have made it possible for users all around the world to track the pandemic's observable effects as they develop in real-time. Action at the global, national, and subnational levels of government was required in response to the COVID-19 outbreak that plagued the world in 2020, which caused health and financial concerns. The way the epidemic was handled provides information on how all types of multi-level governments function, most clearly federations. This sheds information on the design and functioning of federalism as a system of governance by revealing how federations responded to COVID-19. Over the course of a turbulent year, each of them had to deal with conflicts within and among the many levels of government on the legal, political, ideological, and logistical fronts. Governments implemented containment and closure measures in response to the COVID-19 pandemic to limit population mobility and maintain social isolation.⁴⁵ The main non-pharmaceutical interventions (NPIs) used by governments to reduce inter-individual movement and interaction were social distancing (SD) or confinement

⁴³ *Jain* (n 6) 1014

⁴⁴ Emily Berman, 'The Roles of the State and Federal Governments in a Pandemic' (2020) 11 *J NATL SECURITY L & POLY* 61, 62

⁴⁵ Manasee Mishra & Piyusha Majumdar, 'Social Distancing during COVID-19: Will it Change the Indian Society?' (2020) 22 *J HEALTH MGMT* 224, 224

policies.⁴⁶ To preserve public order and serve the interests of the general public, the framework of the aforementioned lockdowns imposing limits has been implemented.⁴⁷ The urgency with which action must be done during a pandemic produces a law-making atmosphere that encourages quick action without examination and the exercise of authority without constraint, where the effectiveness of pandemic legislation issued by governments is a matter of life and death.⁴⁸ Due to capacity issues and a lack of medical facilities, State governments in India have found it difficult to properly carry out their responsibility to preserve public health during the COVID-19 Crisis. The extent to which states depend on the federal government for financial help was shown by this crisis.⁴⁹

After it became clear that the COVID-19 outbreak was a grave public health issue with serious ramifications and consequences for the whole nation, the Centre and the states were faced with a dilemma over how exactly to tackle this unprecedented crisis thereby not violating the Indian Federal structure. As far as the federal government is concerned, the Seventh Schedule of the Constitution, which distributes the powers between the Union, the States, and other constituent bodies, gives the States precedence over the Centre in matters of health.⁵⁰ While Entries 1, 2, and 6 of List II (State List) in the Constitution give the State's legislative control over "*public order,*" "*police,*" and critically "*public health and sanitation; hospitals and dispensaries*", Entry 81 of the Union List gives the Centre the legislative authority over "*inter-state migration; inter-state quarantine.*"⁵¹ Additionally, the Concurrent List's Entries 23 and 29 assign the Centre and States responsibility for "*social security and social insurance; employment and unemployment*" and "*prevention of the extension from one state to another of infectious or contagious diseases or pests affecting*

⁴⁶ Himangshu Kumar et al., 'COVID-19 and Federalism in India: Capturing the Effects of State and Central Responses on Mobility' (2022) 34 EUR J DEV RES 2463, 2463

⁴⁷ Kunal Tandon, 'Coronavirus: The legal framework behind lockdown, curfew, and quarantine' (*Bar & Bench*, 29 March 2020) <<https://www.barandbench.com/columns/coronavirus-the-legal-framework-behind-lockdown-curfew-and-quarantine>> assessed 14 December 2022

⁴⁸ Joelle Grogan, 'COVID-19, the Rule of Law and Democracy: Analysis of Legal Responses to a Global Health Crisis' (2022) 14 HAGUE J RULE L 349

⁴⁹ Balram Bhargava, 'Innovations and best practices built over years will help find solutions to Covid' (*The Indian Express*, 15 October 2020) <<https://indianexpress.com/article/opinion/columns/india-coronavirus-end-covid-19-6726714/>> assessed 12 December 2022

⁵⁰ Pankhuri Agrawal, 'COVID-19 and Dwindling Indian Federalism' (2020) 55 ECON & POL WKLY 16

⁵¹ Constitution of India 1950, Sch VII

men, animals, or plants.”⁵² According to Articles 73 and 162 of the Constitution of India, the executive authority of the union and the states is “coextensive with the legislative power,” respectively.⁵³ Therefore it is clear that, according to the constitutional framework, state governments are expected to manage healthcare and law and order in the primary capacity, while the Centre is given the task of united national leadership, bringing about cooperation, solidarity, and coordination among units of the federation, keeping a check and monitoring the overall COVID pandemic situation in India, and facilitating the states with crucial financial and other assistance.⁵⁴

Early in March 2020, as the problem grew in importance in India, the Centre and the States used two legal options to address the situation. In particular, the Disaster Management (DM) Act, 2005, was referenced by the Centre in its declaration of the pandemic as a “notified disaster” and its imposition of the nationwide lockdown on March 24, 2020. As the pandemic situation worsened, the Centre utilised its residual powers to invoke the statute and give numerous directions to the states because the word “disaster” is not mentioned in the Seventh Schedule. Neither three lists in Schedule VII mention the subject “disaster,” giving the centre the opportunity to invoke and make use of its residuary power enshrined under entry 97 of List I. However, the centre passed the Disaster Management Act (DMA) in 2005, which derives its authority from entry 23 of List III. Concurrent List’s fundamental purpose is to facilitate joint efforts between the centre and the states, therefore the centre made a prudent choice by choosing not to use its residuary powers. There is an additional duty on the centre to grant the states equal rights and obligations with the laws created under entries of the Concurrent List. In light of this, it is crucial to read entry 23 of List III again, which refers to “*social security and social insurance; employment and unemployment,*” to comprehend the inadequacy of the necessary powers in crises for both the centre and states.

⁵² *Ibid*

⁵³ Constitution of India 1950, art. 73 & 162

⁵⁴ Niranjana Sahoo & Ambar Kumar Ghosh, ‘The COVID-19 Challenge to Indian Federalism’ (*Observer Research Foundation*, 29 June 2020) <<https://www.orfonline.org/research/the-covid-19-challenge-to-indian-federalism/>> assessed 07 December 2022

DMA's role is constrained and limited in a "disaster-like situation", and as a result, the powers of the federal government and the state governments and instrumentalities should be preserved.⁵⁵ Additionally, Section 11 of the DMA mandates that the national plan to address an epidemic be prepared "in consultation with state governments and other expert bodies in the field of disaster management," which is missing in the case of the COVID-19 pandemic by completely negating the role of the states in developing a mutually beneficial strategy.⁵⁶ The National Disaster Management Authority (NDMA) is created by the DMA under Section 3, and the Prime Minister serves as its ex officio chairman.⁵⁷ It's interesting to note that Section 6 gives it the authority to "lay down the policies, plans, and guidelines for disaster management" in addition to Section 6(2)(i) which allows it to "take such other measures for the prevention of disaster, the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary."⁵⁸ Additionally, under Section 6(3), authority for the chairman to "exercise all or some of the functions of the National Authority in the situation of emergency" is subject to "ex post facto ratification by the National Authority." Similar provisions are also created for the "State Disaster Management Authority and the District Disaster Management Authority", with the respective ex-officio chairpersons being the *chief minister and the collector/district magistrate/deputy commissioner*.⁵⁹ The National Executive Committee has access to the National Disaster Response Fund under Section 46, which is established by the national government.⁶⁰

The Epidemic Diseases Act, of 1897, which empowers the state governments to handle an epidemic-like scenario in their territories, was the source of inspiration for the states. This law was used by several state governments to create State Epidemic Diseases COVID-19 Regulations for their regions, including mobility restrictions and the closing of businesses, workplaces, and other public spaces. State governments implemented several programs to enforce social exclusion and restrict migration under the authority of the EDA (1897). Orders made according

⁵⁵ Agrawal (n 50)

⁵⁶ Disaster Management Act 1950, s 11

⁵⁷ Disaster Management Act 1950, s 3

⁵⁸ Disaster Management Act 1950, s 6

⁵⁹ Disaster Management Act 1950, s 6(3)

⁶⁰ Disaster Management Act 1950, s 46

to the EDA are legally binding and punishable by law for violations. Section 144 CrPC 1973 gave district authorities the authority to issue curfews and limit public gatherings. To “provide for the greater prevention of the spread of Dangerous Epidemic Diseases,” the Epidemic Diseases Act (EDA), 1897, was created. The EDA’s Section 2 grants the state government’s authority to “take exceptional measures and make rules relating to hazardous epidemic illness,” including “the inspection of individuals... the segregation of persons suspected by the inspecting officer of being contaminated with any such disease.”⁶¹ The central government has the authority to “take measures and impose rules for the inspection of any ship or vessel... and for such detention thereof, or of any person intending to sail therein, or arriving thereon, as may be necessary,” according to Section 2A of the EDA.⁶² The existence of both laws, the DMA and EDA, demonstrates that the states play the principal role in an epidemic-disaster-like circumstance, while the centre plays a guardian-like function in formulating policy, setting standards, and keeping an eye on the issue.⁶³ It is important to note that the 1897 EDA empowers state and federal governments to control the spread of epidemic illnesses. States are legally allowed to implement preventative administrative and regulatory steps to stop the epidemic, but the Centre is only able to take preventive emergency measures to control epidemic illnesses at ports of entrance and departure.⁶⁴

The Centre assumed several duties that would normally come within the purview of the state as a result of the pandemic’s threat to the lives and livelihoods of people, which required immediate steps to be taken by the Government on a national level. The primary obligation for managing a scenario like the COVID-19 epidemic is given to the state government by the constitution and current laws. However, the Centre stepped up to manage the epidemic, notably during the times when there were nationwide lockdowns.⁶⁵ The Centre took on the role of

⁶¹ Epidemic Diseases Act 1897, s 2

⁶² Epidemic Diseases Act 1897, s 2A

⁶³ Niranjana Sahoo, ‘Covid-19 and Cooperative Federalism in India: So Far, So Good’ (*Observer Research Foundation*, 30 April 2020) <<https://www.orfonline.org/expert-speak/covid19-cooperative-federalism-india-so-far-good-65429/>> assessed 12 December 2022

⁶⁴ *Ibid*

⁶⁵ Ramanath Jha, ‘Impact of the COVID-19 pandemic on India’s federalism’ (*Observer Research Foundation*, 27 November 2021) <<https://www.orfonline.org/expert-speak/impact-of-the-covid-19-pandemic-on-indias-federalism/>> assessed 01 December 2022

anchor and led from the front. The unexpected imposition of a nationwide lockdown without consulting the states was a key criticism of the Centre's reaction to the epidemic in the first wave. The COVID-19 crisis resulted in migrant workers who were left in the cities without employment or even the most basic requirements returning to their hometowns. The state governments, who were likewise caught unprepared to handle their returning migrant labour, handled the problem. Given that "public health" is a State's concern since the matter falls in List II, it is likely and desirable that a statute that gives the State primary or main responsibility and duty and the Centre coordination duties best reflects the constitutional framework of Indian Federal Polity. The Centre, unlike the first lockdown, however, has somewhat come to understand the sensitivity of States during the second phase of the nationwide lockdown, and the States' autonomy in terms of taking action against the pandemic has been restored.⁶⁶

CONCLUSION

Cross-border issues are fundamental to pandemics.⁶⁷ The ideal state of affairs would be for cooperative federalism to act as the compass for interactions between the centre and the States. Prakash Chandra Jha, a researcher on this topic, believes that "*For the smooth operation of our federation, harmonious and cooperative relationships between various States are just as crucial as those between the centre and the States.*"⁶⁸ The current issue to affect inter-State ties is the coronavirus epidemic, which has been a concern in the past. Unfortunately, this was not the case during the early stages of the shutdown, even though the COVID-19 epidemic provided an excellent chance for a genuine demonstration of the cooperative character of federalism. Instead, a top-down strategy seems to have been used. The Central government received harsh criticism for this decision. Under such circumstances, upholding the fundamental principles of democracy and the rule of law is put under more pressure, if not in danger. Indian federalism's ability to solve

⁶⁶ Prakash Chandra Jha, 'India's Cooperative Federalism during Covid-19 Pandemic' (2022) 68 INDIAN J PUB ADMIN 245, 247

⁶⁷ Cary Coglianese, 'Pandemic Federalism' (2022) 68 WAYNE L REV 01, 04

⁶⁸ Jha (n 66) 248

the new issues brought on by the economic crisis, globalisation, the COVID-19 outbreak, and migration is put to the test.⁶⁹

If the bottom-up strategy had been used and the States had been involved in the decision to put the country under lockdown, this epidemic might have been managed successfully. Simply expressed, while Indian federalism has grown in political significance and usefulness, the centralizing tendencies of it is visible. Since the Indian federation is extremely centripetal, states have always lacked the necessary legislative and financial power to take autonomous action and launch significant programs. India used the authority of the Union (federal) government to enforce an extremely strict nationwide lockdown as a result of the worldwide COVID-19 outbreak.⁷⁰ Despite significant differences across states in terms of finances, healthcare capability, and the frequency of COVID-19 cases, this centralised one-size-fits-all mandate was implemented. To avoid one-size-fits-all policies in the future and have more locally tailored policies, India must not only develop better top-down policies but also acknowledge the need for structural change and reform necessary to transform the country into a truly federal union rather than a centripetal or fictitious federal union.

⁶⁹ *Ibid*

⁷⁰ Abishek Choutagunta et al., 'Battling COVID-19 with dysfunctional federalism: Lessons from India' (2021) 87 SOUTH ECON J 1267, 1268