

Mechanisms of Intergovernmental Relations in India

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Intergovernmental Relations in India have been by and large an affair of "executive federalism" rather than "legislative federalism" which, via Rajya Sabha, never got off the ground. At the same time, there has been no serious effort to reinvent this House as a truly federal second chamber.¹ This paper therefore proceeds to examine the nature of executive federalism in India.

The mechanisms of intergovernmental relations cannot entirely be a matter of only formal constitutional provisions in any country. For the relations of such magnitude and contingencies are not amenable to envisioning and regulating through a rigid legalistic process. The nature of the problems demands flexibility and adaptability to changing conditions and the targets set by the two orders of the government. This is amply demonstrated by the Indian experience in this regard. The governments of India have displayed different approaches at different points in time with regard to Article 263 of the Constitution providing for the establishment of an Inter-State Council (ISC) in case it appears to the President that such a body

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would facilitate public interests as well as promote harmonious intergovernmental relations. From 1950 to 1990, the first five Prime Ministers did not form the Inter-State Council under this constitutional mandate and preferred to make do with non-constitutional bodies like the National Development Council (NDC) or ad hoc intergovernmental conferences like Chief Ministers'/ Ministers'/ Secretaries' conferences. It was in the 1990 that Inter-State Council was set up by the first coalition government in New Delhi formed by a group of non-Congress parties who called themselves the National Front (NF) under the Prime Ministership of Janata Dal's V.P.Singh.²

Observers of the Indian federal scene have generally come to the conclusion that intergovernmental relations, especially through formal channels, have not been all that salient either in the phase of one-party dominance under the Indian National Congress or in the phase of multi-party coalition governments since 1989. This conclusion is both correct and incorrect. This is because the absence of the conduct of intergovernmental relations largely through formal channels does not mean the absence of such relations at all. As I argue later there are formal, informal as well as non-obvious processes of intergovernmental relations that can only be fully understood if the study seeks to observe and analyze all processes including those that are unconventional and subterranean.

Major Intergovernmental Relations (IGR) Forums :

There are numerous bodies and processes with varying degrees of formality or informality through which intergovernmental relations in India have been conducted. Functionally several such bodies have emerged over the years, some by cabinet resolution (without a formal presidential order), some under Acts of Parliament and some on the initiatives of the state governments.³ Thus, it can be said that apart from the first degree of

constitutional formality under which ISC was established under Article 263, there is a second degree of institutional formality, namely, parliamentary enactments by which such bodies are set up, e.g. Zonal Councils. The third degree of institutional formality characterizing such bodies are set up by a cabinet resolution e.g. the National Development Council (NDC). It would appear that going by the norms of the federal executive as designed by the constitution, the most proper way of setting up such a body would be either a presidential order on the advice of the cabinet in consultation with the state governments or a parliamentary enactment in consultation with state governments assented to by the President. A cabinet resolution in the matter would appear to be a *fait accompli* which may pass off under the pretext of conventions of the constitution which are not strictly codified. Informal intergovernmental mechanisms on the initiatives of the union or state governments are not strictly unconstitutional, but they are certainly extra-constitutional. They may be justified under the exigencies of an emergent situation as ad hoc steps with mutual consent between the two orders of the government. Examples of such mechanisms are the Chief Ministers' Conferences, Ministers' Conferences and Secretaries⁴ conferences. Besides, there is another category of informal conferences representing parliamentary and executive functionaries not necessarily representing their government like Speakers'/ Governors'/ Presidents' conferences.

Membership, Autonomy, Representation of Interests and Decision-making :

The ISC and the NDC have overlapping membership in that these two bodies include the Prime Minister and some key Union Ministers, Chief Ministers of States and effective executive heads of the Union Territories. In case of the NDC, the Deputy Chairman of the Planning Commission is

also a member. The NDC was set up to review and finalize the National Plan made by the Planning Commission and to look into the question of socio-economic policies affecting national development. The Prime Minister/ Chief Ministers' Conferences, Ministerial conferences, Secretaries' conferences are self defining in as much as they respectively include the First Ministers, Ministers and officials from the two orders of the union and state governments. They are chaired by the Prime Minister or respective union ministers or union officials to coordinate policies of two levels of the government. The five Zonal Councils set up under the States' Reorganization Act, 1956, are high level advisory bodies comprising chief ministers of states in that zone, development ministers and chief secretaries of these states, and a member of the Planning Commission. Each Zonal Council is headed by the union home minister. Its purpose is to provide a common meeting ground in each zone for ensuring resolution of inter-state problems, fostering balanced regional development and building harmonious union-state relations. The Zonal Councils are the sole IGR mechanism for regional or territorial development. It was hoped that these bodies would serve as a mechanism of decentralization at the intermediate level below the Centre and above the States. However, their performance is marred by irregular meetings and negligible achievements mainly due to apathy of an overburdened union government and fractious states in a region. The only exception is the North-Eastern Council that has notable record of activities and performance.

The above bodies are adequately representative of the union and state governments in the areas of their respective concerns. It is somewhat more difficult to assess the question of autonomy and interests of federating entities, particularly in case of less formal and informal organizations, as their meetings are normally convened by the union

government. In case of the ISC, there is greater constitutional sanctity in as much as its rules of business require, the union to convene a meeting. Earlier, agendas and issues for discussion were also fully under the discretion of the Prime Minister but now Chief Ministers can raise certain issues under an amended rule.⁵ It would stand to reason that an insistent state government can build up pressure on the union government to convene a meeting or raise a matter at a meeting. But since the Prime Minister chairs it, he/she may rule out a demand or a matter that is sought to be raised under the ISC rules. The decision is not by majority but by consensus as sensed by the Prime Minister. Yet it stands to reason that it would be difficult for a Prime Minister to totally ignore an insistent and sizeable section of opinion on the floor of the ISC.

An insider's view confirms that such alignment and realignment of interests and strategies among the participating governments do take place in ISC meetings. If the union's proposal affects certain states badly, they come more prepared to put forward their points of view and oppose the proposal so made. If the policy affects a group of states, they unite against the Centre. For example, in a discussion on Article 356 providing for central intervention in a State government in crisis situation, the States that are politically more vulnerable to such pressures on account of being under the rule of party other than that in power in New Delhi are more likely to take a reformist/ abolitionist view. Similarly, if there is a proposal from the Union government to change a taxation law, the States that stand to lose from it are likely to oppose it. However, at the end of the day, all different points of views are taken into account in fabricating a consensus or a draft which would satisfy most or all. "A lowest common denominator is aimed at which protects the interests of the state governments and also promotes the objectives of the Union government".⁶ Yet evidently, consensus does

not always mean unanimity. For instance, the latest meeting of the ISC in Srinagar in August, 2003 was reported to have 'unanimously' decided to amend Article 356 to incorporate safeguards for protecting autonomy of the States as suggested by the Sarkaria Commission⁷ as well as ruled by the Supreme Court in S.R.Bommai vs. Union of India (1994).⁸ But the press also reported at least two chief ministers – those of Punjab and Tamil Nadu – speaking from Chandigarh and Chennai that it would be more desirable if Article 356 was deleted from the constitution.

From available indicators, the patterns of NDC meetings are not very different from those of the ISC. The NDC has been mainly used for facilitating the process of planning involving the two orders of government and for the approval of the Plan document by the executive heads of the Union and State governments. The State governments submit their five year plans and annual plans to the Planning Commission which prepares a National Plan after discussion with delegations from State governments consisting of Chief Ministers and relevant Ministers and Secretaries.⁹

The Planning Commission draft is then discussed and approved by the Union government. The revised/ unrevised draft is then finally presented to a meeting of the NDC for intergovernmental approval. "The NDC is a policy making body and its recommendations are not just advisory suggestions but policy decisions and policy directives. It is a national forum for planning which gives informal sanction to the underlying concept of cooperation between the Centre and the States. It brings states into an organic relationship with the organization of national planning".¹⁰

An official participant's view of the process suggests that typically, the Prime Minister inaugurates the NDC meeting, followed by the speeches of Deputy Chairman of the Planning Commission, the Finance Minister and

the Chief Ministers. All come with prepared speeches which is circulated in the meeting so there is hardly any interactive discussion. Finally, a draft prepared by the Planning Commission (which works as the Secretariat of the NDC) is put forward as the final document approved. However, behind this seemingly easy consensus there are prior interactive negotiations conducted by the Planning Commission officers with the state governments.

In case of at least NDC there have been occasional dissatisfactions and critical voices that have been heard. For instance, the Andhra Pradesh Telugu Desam party leader N.T.Rama Rao walked out of an NDC meeting being chaired by the Congress Prime Minister Rajiv Gandhi in the mid-1980s complaining about the lack of time granted for presenting the point of views of his government. However, more often than not non-Congress governments including the Left Front government of West Bengal, despite their occasional differences with the Plan documents, have generally gone along rather than taken recourse to dissociating themselves from the whole process. The State governments have also at times complained that the agenda papers are sent late to them that doesn't allow them time for home work.

It would appear that both in the case of the ISC and the NDC the leeway for a largely open-ended negotiations or discussion is somewhat limited because of the given structures of the constitution and the planned documents with certain inbuilt technicalities.¹¹ It is probably for this reason that ministerial and secretaries meetings involving the two orders of the government are more open and interactive. These ad hoc conferences are called to discuss some emergent political and administrative problems on which the representatives from the two levels have a less constrained discussions and deeper negotiations with more open minds. Many feel

that the real nitty-gritty of intergovernmental relations are conducted in these forums.

An official version describes that these meetings are usually convened by the union ministry concerned. The agenda is set by them, if the concerned ministry from a State government wants some specific item to be included in the agenda, they can do so. The meeting is chaired by the concerned Union Minister/ Secretary. All ministers/ Secretaries from big or small States are given adequate time to express their views. In need of more time, the meeting is extended to more than a day. The decision is not by voting. The delegates negotiate and bargain and try to convince each other and the proceedings are recorded. The final decision is based on a draft that reflects a consensus on which all delegates would agree. If there are different views expressed by various governments and the Centre has a different view, then there is an attempt to talk further and find out how different views can be accommodated.¹² Other formal and informal bodies also work under these conventions or rules.

Implementation and follow-up Action :

In this regard, the performance of ISC has been abysmal. There has hardly been any constitutional amendment or parliamentary enactment in pursuance of the recommendations made by the ISC so far as the political institutional dimension is concerned. For example, the Sarkaria Commission Report had recommended constitutional entrenchment of the NDC and Planning Commission and for making Finance Commission a permanent body. None of these recommendations have been carried out through a constitutional amendment. However, some of the recommendations of this Commission relating to taxation and fiscal matters have resulted in constitutional amendments.¹³ But even in this

context, the Sarkaria panel's suggestion for setting up a constitutional Commission for reviewing the whole taxation system has not been done. Some limited tax reforms administrative committees have however been set up from time to time, e.g. Raja Chelliah Taxation Reform Committee that reported a few years back.

As far as the NDC is concerned, there is hardly any follow up at the political level until the next NDC but the Planning Commission goes through the motions of periodical reviews of the Plan in relation to both the Union and State governments. In case of Ministerial and Secretaries conferences, once the decision is taken, it is left to the parties concerned to implement the decisions. By the time of the next meeting, everyone becomes more alert and take stock of the progress made in the implementation. When they finally meet, they discuss and share their stock taking, however, there is no centralized monitoring.¹⁴

Effectiveness :

It is not very easy to measure and evaluate the effectiveness of these bodies in a clear-cut terms. The ISC once set up in 1990 did not meet for six years. Its first meeting was held in 1996, in a period of over a decade it has met eight times. This appears to be rather surprising in view of the fact that this period has been one of the paradigm shifts in union-state relations in India. In the same period, its standing committee has met nine times. Though its sub-committee has met more frequently to prepare the groundwork for the full council meeting. This failure of the ISC to emerge as an active intergovernmental mechanism in the Indian federal system needs an explanation. The reasons must be discussed in terms of two phases : (1) The first four decades of Indian federalism during which the ISC was not formally set up, (2) The period since its inception in the 1990s. During the first phase of Congress Party dominance at the Centre

as well as in most States, by and large, intergovernmental issues were resolved across the party table at Congress Party forums like the Congress Working Committee (CWC) and that Congress Parliamentary Board (CPB) comprising powerful Union Ministers and State Chief Ministers. This not only overshadowed the NDC but also atrophied the necessity for setting up the ISC. Moreover, economic planning which was a more complex issue necessitated creation of the NDC by an executive *fait accompli* presumably to make it more amenable for the union to manage intergovernmental affairs in its own way without the constraints of a constitutional body. The successive governments also continued this tradition and practice discussed above.

Further, the Sarkaria Commission though it recommended the setting up of the ISC under Article 263, reduced its importance by suggesting the continuation of the NDC as a separate body. The continued existence of two separate bodies has meant an active NDC in the more salient area of economic federalism and the eclipse of ISC in the political domain, at least thus far. Its importance has further been reduced with the formation of minority/ coalition governments in the post 1989 phase where different sets of parties including the regional ones, ruling in some States have become partners in the ruling coalition. This has allowed the regional parties direct access in the Union cabinet. Therefore, they have not been very keen and insistent on the activation of the ISC/NDC.

It is for this reason that the frequency of the NDC has also declined. Till date, NDC has met 50 times. During 37 years of Congress dominance and Janata Party phase, the NDC had 40 meetings with an average of 1.1 per year. In 13 years of multi-party coalition/ minority governments since Nov-Dec 1989, it had ten meetings with an average of 0.72 meetings per year. Further, neo-liberal economic reforms in India accelerated since 1991 have

not exactly resulted in abolition of the Planning Commission but its role is considerably reduced due to declining size of public investment in the economy. Besides, there has also occurred, some degree of decentralization of the planning process due to a greater extent of federalization of the political system since 1990's.

To begin with the factors affecting the effectiveness of these mechanisms,¹⁵ the most important factor impinging on the working of the ISC and NDC is the party system. The degree of discussion and debate in an intergovernmental forum is likely to be more intense in a fragmented party system than in a one-party dominant system. The second factor that influences the effectiveness of these mechanisms concerns issues and identities in question. For instance, developmental and other non-controversial issues are more likely to be resolved at an intergovernmental forum than issues dealing with major constitutional matters. Moreover, intergovernmental consensus can sometimes be possible under the pressure and urgency of the moment and the ideological climate of the time. Governments have been generally more accommodative in arriving at a workable understanding on developmental plans and fiscal federalism than on constitutional amendments relating to federal provisions and constitutional division of powers between the union and the states. Further, the shift to neo-liberal policy paradigm explains why consensus has been feasible on economic reforms now in this changed political atmospherics, the same way as the consensus on development planning was easier to achieve in the then prevailing socialist ideological climate of the Nehru era. Yet another important factor is the personality of the Prime Ministers and the Chief Ministers concerned. The stronger the personalities involved on both sides at an intergovernmental forum, the less likely are the chances of a consensual outcome. Furthermore,

demographic and geographical factors also influence the differential in the political weight of the larger States in comparison to that of the smaller States. Finally, since the rules of business and proceedings are informal in these forums, flexibility also contributes to their success. The more the political actors at an intergovernmental forum are prepared and well briefed in advance on the agenda the more likely they are to bring dispassionate and rational discussion to the table.

Reforms :

As far as suggestions for reform/ change are concerned, the Sarkaria Commission Report (1988) had given more attention to these mechanisms and had recommended at greater length for their constitutionalization and federalization. The Venkatchaliah Constitution Review Commission Report (2002) has also underlined the importance of ISC and recommended utilization of its full potentiality for evoking more equitable Union- State relations. This Commission, while endorsing the recommendations of the Sarkaria panel on Centre-State Relations recommended that " in resolving problems and coordinating policy and action, the Union as well as the States should more effectively utilize the forum of Inter-State Council. This will be in tune with the spirit of cooperative federalism requiring proper understanding and mutual confidence and resolution of problems of common interest expeditiously."¹⁶

Besides, a few procedural reforms like holding regular and preferably in-camera meetings with advanced agenda, preparatory groundwork and flexible and consensual rules of business, the most important structural reform that can be suggested is the merger of the NDC and the ISC as the key apex intergovernmental mechanism. This will have two desirable effects.¹⁷

Firstly, it would avoid unnecessary bifurcation of the apex intergovernmental body with the same membership in the NDC and ISC. The division of work between the two in terms of economic and political policy making is apparently made on the reasoning that it would prevent politicization of the planning process. In any case, politics cannot really be divorced from economic decision making. In fact, a certain degree of political contestation is necessary to inject a dose of democratic bargaining and to remove the distortions of an imposed consensus that may really conceal an unjust political order.

Secondly, this artificial separation also results in narrow construction of policy areas not only along economic and political issues but also in the proliferation of a very large number of national councils for a variety of policy areas that lack integrated high power status to lend weight to their recommendations. These national councils may still be continued as bodies of technocrats whose recommendations must be considered by a top-level intergovernmental agency representing the executive heads of the two orders of government. Moreover, there is no constitutional obstacle to the merger of the NDC and ISC as Article 263 of the constitution does not really restrict the functions of the ISC to any specific domain in terms of economic or political decision-making. The division of work between the two is only implicit in the cabinet resolution setting up the NDC which only mentions planning related functions for it.

Notes and References:

1. Balveer Arora in a roundtable on *Mechanisms of Intergovernmental Relations* organized by the Forum of Federation, Ottawa and Institute of Social Sciences, New Delhi in April, 2002.
2. Although the first non-Congress government in New Delhi of the Janata Party (1977-79) was formally one-party majority dispensation, astute observers of the Indian political scene have generally interpreted it as a de facto coalition. This is because the five parties that hurriedly merged around the 1977 Lok Sabha elections in the backdrop of the Emergency (1975-77) never really completed the process of merger to its logical conclusion and its politics revolved around intense factional rivalry among the pre-merger constituent parties i.e. Congress (Organization), Bhartiya Lok Dal, Bhartiya Jana Sangh, the Socialists and the Congress For Democracy.
3. There are also some National Councils representing the Union and State governments in different policy areas like the National Council on Water Resources, National Urban Development Council, National Council on Local Government, National Council on Health etc. In addition, there are several other institutions/ agencies as well which are not intergovernmental in scope but they do facilitate articulation and harmonization of intergovernmental policies, e.g., the Finance Commission, National Human Rights Commission, National Minorities Commission, Scheduled Castes and Scheduled Tribes Commission, and the Official Language Commission that are Union agencies with provincial implications. (M.P.Singh in a roundtable on *Mechanisms of Intergovernmental Relations* organized by the Forum

of Federation, Ottawa and Institute of Social Sciences, New Delhi in April, 2002). For a detailed discussion on Union agencies with provincial implications see Rekha Saxena, "Intergovernmental Agencies in Federal Systems : A Comparative Study of Canada and India", Ph.D. thesis, Department of Political Science, University of Delhi, 2001.

4. The term Secretary in India designates the bureaucratic head of the Ministry/ Department who is next only to the Minister, the political executive.
5. Guidelines for Identifying and Selecting Issues to be brought before the Inter-State Council, *Inter-State Council Secretariat*, 22 January 1999, Section I, Clause (i), (ii) and last paragraph.
6. Interview with B.P. Singh, a former Home Secretary, Government of India in New Delhi on 29 August, 2003.
7. Sarkaria Commission on Centre-State relations was set up by Congress government headed by Prime Minister Indira Gandhi in 1983 to review union-state relations. The Commission submitted its two volume Report in 1987-88.
8. Prior to *S.R. Bommai vs. the Union of India* (1994), the court gave the Union Executive practically a free hand in determining whether the constitutional machinery in a State had broken down in terms of Article 356 for proclaiming a President's rule there. It had reasoned that it was a "political thicket" best left to the Union Executive. For the first time, the court reversed its earlier rulings in the *Bommai* judgement, saying that the power to declare President's rule was of course to be exercised by the President on the advice of the Union Cabinet but this power was not absolute rather it was one which the

Union Executive ought to exercise on the basis of certain determinable criteria that should bare relationship with the objective realities of the case concerned. The court in fact went ahead to establish its power of judicial review in the matter and ruled that the assembly of the State in which a government is dismissed should not be dissolved until at least the approval of the Presidential Proclamation by the Parliament. The Bommai judgement thus in effect has become the new constitution so far as the President's rule is concerned until the Supreme Court itself reverses that ruling. In the recent ISC meeting it was also decided to incorporate The Bommai judgement in the constitution.(Rekha Saxena, ed., *Mapping Canadian Federalism for India*, Delhi:Konark,2002,p.33)

9. An IAS officer who has served alternately the Government of Orissa and the Government of India tells me that in the mid-1980s sometimes the Orissa delegation used to consist of nearly a hundred persons who came to New Delhi for 3-4 days for discussion with the Planning Commission. In more recent years, the number has considerably come down due to financial crunch. (Interview with A.R.Nanda, a former Health Secretary, Government of India in New Delhi on 24 August, 2003).
10. Akhtar Majeed, paper prepared for roundtable on *Mechanisms of Intergovernmental Relations* in India held on 22 April, 2002 organized by the Institute of Social Sciences, New Delhi, P.10.
11. Interview with B.P.Singh and A.R. Nanda in New Delhi.
12. Interview with A.R.Nanda in New Delhi.

13. For example, the Inter-State Council approved the alternative scheme of devolution of share in central taxes to States. A bill for giving effect to this decision was passed by the Parliament with effect from April 1, 1996 as the Constitution's Eightieth Amendment Act 2000 (internet).
14. In the past, during the period of one-party majority governments, Prime Ministers Morarji Desai and Indira Gandhi had started the practice of visiting different State capitals where they wanted to discuss performance of some centrally sponsored developmental plans with the State governments. Whenever they visited a State capital, Chief Minister and major officials of State concerned would meet the Prime Minister in a conference to monitor the progress. But now in the era of multi-party coalition governments with regional parties as partners ruling in some states, the Prime Ministers do not find it politically feasible. (Interview with A.R.Nanda cited earlier and M.P.Singh in Delhi on 1 Sept. 2003).
15. For a detailed discussion see Rekha Saxena, "Strengthening Federal Dialogue : Role of NDC & ISC", *Contemporary India*, Vol.1,no.3,July-September, 2002.
16. Government of India, *Report of the National Commission to Review the Working of the Constitution*, Delhi : Universal Law Publishing Co. Vol. 1,para 8.12.4,p.164.
17. For a detailed discussion see Rekha Saxena, "Role of Intergovernmental Agencies", *The Hindu*, 29January, 2001.