

# Accountability and Transparency

## Challenges to Executive Dominance in Intergovernmental Relations

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### 1. Introduction

Vital democracy requires citizens that are well informed and engaged in the process of governance. Through independent and impartial media, active non-governmental organizations, and new forms of citizen involvement such as e-government, democracy now involves much more than exercising the franchise once every four or five years. For governments where intergovernmental relations play a significant role in governance and where those relations are dominated by the executive order of government—including the Prime Minister, Cabinet, and the departmental officials that support them—the increasing demand for citizen involvement poses a particular challenge. The practice of “elite accommodation” is not conducive to transparency and accountability to the public.

Despite significant differences in the nature and structure of federalism in India and Canada, both these countries face the transparency and accountability challenge. Both countries are characterized by strong executives where power rests with the Prime Minister and Premiers/Chief Ministers, each leading typically

majority governments where party discipline means there is little legislative challenge to government directions. Canada's Constitution delineates a relatively clear division of responsibilities and Canadian federalism is relatively decentralized. By contrast, India's Constitution presupposes functional interdependence and Indian federalism is centralized—meaning that the central government enjoys the majority of power vis-à-vis the states. Yet both countries experience a significant degree of intergovernmental interaction in the day to day operation of government. Similarly, in both countries, intergovernmental relations are practiced largely by executives.

The lack of transparency and accountability has impacted on the legitimacy of government in both countries. In Canada, the failure of two major attempts at constitutional reform (Meech Lake in 1990 and Charlottetown in 1995) is, at least in part, attributable to a rejection of the “behind closed doors” approach to the negotiations that led to tentative accords. In India, the need to improve transparency and accountability in intergovernmental relations is arguably acute, driven by the need to address corruption by officials with too few checks on their powers.

This paper examines how executive federalism in India and Canada threatens the goals of transparent and accountable—and thus democratic—government and proposes some solutions that could address the challenge.

## **2. India**

The development of a federal system of government relies on interaction. In India it plays a vital role due to regional diversity and functional interdependence between different levels of government. A federal form of government promotes decentralized decision-making and, therefore, is conducive to a greater freedom of choice, diversity of preferences in public services, political participation, innovation, and accountability. India is a parliamentary federation where the executive nonetheless enjoys a very powerful position and dominates intergovernmental relations in all aspects. The growth of executive federalism is one of the special and important features of Indian federal development.

Indian Federalism is linked with the parliamentary system where the President is the formal head of the republic while the real power is enjoyed by the Prime Minister and his Council of Ministers who are members of, and responsible to, the parliament. Indian executives enjoy a wide range of powers. As a result, transparency and accountability within intergovernmental relations is reduced, and carries with the risk of abuse of their authority.

The Indian Constitution gave extensive powers to the central legislature and executive to keep the nation together. This has resulted in the dominance by the central government in all social, political, and economic aspects; the division of powers between the centre and state government favours the centre.

Intergovernmental relations are usually carried out by the executives of the two levels of government—centre and state—where they can coordinate, plan, and discuss regional and national developments.

In India, intergovernmental relations are based on the Constitution, which presupposes a functional interdependence between centre and state governments, as set out in Articles 245 to 293 of the Constitution.

## ***2.1 Executive Federalism in India***

Executive federalism is becoming increasingly important in India for a number of reasons. First, increasing interdependence in intergovernmental affairs between centre and state governments increases the power of the executive branch. Second, executives serve as the sole link between centre and state governments and so dominate intergovernmental relations. Third, all decisions and meetings are carried out by the executives in governmental and intergovernmental affairs. Taken together, these factors contribute to executives holding a dominant position in intergovernmental and international affairs.

Executive interaction between levels of government is also characterized by high levels of secrecy. If secrecy is observed in these processes of government and is kept hidden from legislative and public scrutiny, it will promote and encourage corruption and abuse of power.

Not only secrecy but executive federalism also contributes towards an unaccountable system of government, where there is minimal public participation in intergovernmental decision-making processes.

## *2.2 Instances of Executive Dominance in India*

Executive dominance manifests itself in two ways: first in relation to other branches of government, particularly the judiciary and legislature; and second, other levels of government, particularly the state level.

The Constitution of India has assigned irrevocable powers to the executive branch of government. The executives are not only vested with executive and administrative powers but they also enjoy legislative power to a large extent. The most important legislative power of the executives is the ordinance making power provided under Articles 123 and 213 for the centre and state executives respectively. The ordinance making power of the executives means that at any time when the legislature is not in session and executives are satisfied that circumstances exist which render it necessary for executives to take immediate action, they can issue ordinances without involving legislative and public discussions. An ordinance has the same effect as any other law passed by the legislature. Such an ordinance ceases to operate at the expiry of six weeks from the date of reassembly of the legislature. The executives have misused this power quite often without any democratic accountability. This encourages them to hold a dominant position without being transparent in their action.

Another example of executive dominance is the central executive's power to invoke emergency, which is provided under the Indian Constitution. The executive of the central government can impose emergency and presidential rule on any state and suspend their democratic functioning. The central executive may give directions to any state at the time of emergency as to the manner in which the state should exercise its executive powers. In short, all state powers are transferred to the central government in such a state of emergency.

Executive dominance can also be observed in the economic affairs of the country, as executives are responsible for the preparation of the budget, levying of taxes and revenues in the state. Again, these processes reduce the scope for transparency and accountability within government.

### *2.3 Executives and Intergovernmental Relations*

In India, the executive has always remained powerful and dominant in comparison with the other two branches of the government. They also hold a dominant position in intergovernmental relations. The executive heads of the two levels of government carry out all intergovernmental business in a largely unaccountable environment.

A number of factors have increased the power of the executives and made them dominate the intergovernmental relations. These include the fact that executives act as a mouthpiece for their respective governments. Therefore, all talks, negotiations, discussions, and decisions relating to intergovernmental policies, agreements, disputes, etc., begin with the executive heads of the two levels of government. All such discussions and negotiations take place behind closed doors, which makes it difficult to hold the executive accountable for the success or failure of such agreements and policies.

If any consensus or agreement is reached between the executives of centre and state governments at an intergovernmental meeting relating to any subject of intergovernmental affairs, they have the power to decide whether or not to enforce the agreement or policy. Executives often avoid taking prior approval of the execution of such agreement by referring it to the legislature. Even if such an intergovernmental agreement were taken to the legislature, it bears no significance, as executives are the members of the party holding a majority in the legislature, thus ensuring easy approval.

From the above discussion, it is clear that executive heads of the two levels of the government not only enjoy dominance in executive branch but also in the arena of intergovernmental legislative policies and agreements.

The executives representing centre and state governments carry all intergovernmental decisions on all subjects. In their decision-

making process, executives hold meetings in isolation where people and their representatives cannot make out what they are discussing and how they are representing their regional and national interests in intergovernmental talks. It becomes difficult to claim accountability in such a federal arrangement. Moreover, the general public is only aware of that aspect of discussion which is revealed and disclosed by the executives at their discretion. Thus, the whole process of executive intergovernmental meetings lacks transparency and public scrutiny.

Intergovernmental economic affairs are also governed by executive dominance. The Constitution distributes revenue generation and expenditure allocation powers between centre and state governments such that executives of the central government have been given more powers. The state government has to depend upon the central government for aid and funds for the implementation of developmental programmes to be carried out in their regions. All this means that the central government enjoys a predominant position and tends to dominate intergovernmental relations. For example, borrowing by the state government requires prior approval by the centre government. Furthermore, state governments are not allowed to borrow directly from external sources. In intergovernmental economic policies all negotiations and planning take place between the executives of centre and state governments. Executive dominance and secrecy can also be observed in the process of budget formulation and in the determination of expenditure priorities. Here again, the problem is that the closed budget process lacks transparency and accountability towards people.

In India, all intergovernmental affairs are managed inter-ministerial meetings. The establishment of Inter-State Council in 1990 played an effective role in regulating centre-state relations as proposed by the Constitution. Intergovernmental relations presuppose functional interdependence between different levels of government. Article 263 of the Constitution provides for the establishment of the Inter-State Council to harmonize centre-state relations and for encouraging interaction in the federal system. The Inter-State Council consists of Prime Minister, Cabinet Ministers, and Chief Ministers of all states and Union Territories. This is an inter-

governmental forum designed to bring the two levels of the government together to discuss, plan, and negotiate economic and developmental issues of joint concern. It is provided for that all decisions on matters of national importance should be taken after consulting the Inter-State Council. The creation of the Council was a positive step forward in encouraging intergovernmental relations, but it is nonetheless fully dominated by the executives of the two levels of the government. There is no representation from, or role for, the legislature in deciding the agenda, programme, and issues to be discussed in the Inter-State Council. Furthermore, meetings of the Council are held in camera and, while the questions discussed by the Council are determined and decided by consensus, the decision of the Prime Minister/Chairman is final. All this contributes to a curtailment of transparency and accountability in such an intergovernmental forum, and in turn strengthens and encourages executive dominance.

There are several other intergovernmental organizations, institutions, commissions, councils, agencies, forums, etc., established in order to ensure coordination in intergovernmental relations. The executives dominate all the formal and informal intergovernmental processes in all these bodies. Executives always prefer informality and flexibility in intergovernmental forums or councils.

Another institution regulating intergovernmental relations is the National Development Council established in 1952. The Sarkaria Commission on Centre-State Relations in 1987-8, recommended the establishment of National Development Councils along with the Inter-State Council, and it is one of the two major organizations devoted to intergovernmental relations. It does not have constitutional or parliamentary status but was the outcome of an executive order. The executives of the two levels of government come together and discuss all intergovernmental affairs. This institution is also dominated by the executives, as is the Inter-State Council, denying accountability and transparency in their approach to these intergovernmental meetings.

The Finance Commission and Planning Commission are two further bodies regulating intergovernmental financial relations. The Finance Commission is a constitutional body, concerned with the

distribution of tax proceeds, revenue, funds, and grants between the different tiers of government in accordance with their share, need and demand. The Planning Commission, by contrast, is an executive body that distributes a larger part of central grants to the states than the Finance commission. The central grants recommended by the Planning Commission are discretionary. Out of the total grants that state governments receive from the centre, 70 per cent is by the Planning Commission and 30 per cent by the Finance Commission. Therefore, the central executives regulate most of the grants and transfers through an extra-constitutional body and thereby dominate the process of fiscal distributions amongst different tiers of the government.

The purpose for listing some these intergovernmental forums that are operative in India is to highlight the executive dominance in intergovernmental relations. These intergovernmental bodies are designed with a view to providing a forum for centre and state governments, to encourage interaction and cooperation in regional and national development. However, they have ultimately resulted in executive dominance in the existing Indian federal structure. It cannot be ignored that these institutions have attempted to bring the two levels of the government together for the purpose of effective intergovernmental interaction. Yet they have resulted in a form of executive federalism which poses a threat to the accountability and transparency executives in intergovernmental relations.

#### *2.4 Some Suggestions*

Unaccountable and un-transparent intergovernmental relations are the outcome of executive federalism in India. A cooperative federal structure and functional interdependence between central and state governments encourages executive dominance in intergovernmental relations. Therefore, it has become necessary to create ways to overcome such challenges of accountability and transparency.

There should be reform and improvement in the existing intergovernmental institutions. These institutions should also have legislative participation in the determination of issues and the agenda to be discussed in the intergovernmental meetings. There



should be openness in the functioning of the governments headed by the executives while they are negotiating intergovernmental proposals. The intergovernmental bodies should work transparently without undue interference by the executives.

A more effective role should be assigned to legislatures in intergovernmental affairs. The executives should be held accountable and transparent in all their intergovernmental affairs vis-à-vis financial and social affairs.

There should be an independent body comprising qualified experts who can look into intergovernmental agreements before they are signed and implemented between the centre and state governments. They should have power to question executives regarding all intergovernmental agreements, plans or programmes for which they are responsible and should have the power to demand answers to their questions.

Another step can be the involvement of local governments or village panchayats in the intergovernmental bodies. Panchayats are directly associated with the people and, therefore, should have representation and participation in intergovernmental projects, agreements, discussions, negotiations, and decisions because they will ultimately affect the general population.

There should be accountability and transparency in intergovernmental financial matters. A more effective, vigilant, and active role should be assigned to the Comptroller and Auditor General, so that they can keep account of the executive decisions and practices in financial matters regarding distribution and utilization of proceeds of tax, revenue, and funds.

The involvement of e-governance in the structure will encourage people's participation in governmental and intergovernmental processes. The independent media can also play a role in making the executive accountable for success and failure of their programmes, plans, and policies.

The establishment of facilitation centres can also play a vital role in making executives accountable and transparent in their intergovernmental relations. These centres should have all the information about the functioning of the government in inter-

governmental affairs and it should be easily and freely accessible to the public at these centres. Above all, people should be aware of every intergovernmental process that is being initiated, developed or negotiated by the executives so that they can develop a sound public opinion, and can question and hold executives accountable for its success or failure.

### **3. Canada**

Donald Smiley coined the term “executive federalism” in 1980 to describe the predominance of executive interaction in Canadian intergovernmental relations. Smiley was highly critical of executive federalism and his critique continues to resonate today: elite accommodation practised by men behind closed doors to the exclusion of the Canadian public is undemocratic, un-transparent and unaccountable.

According to data from the Canadian Intergovernmental Conference Secretariat, which supports meetings and conferences of Premiers, Ministers, and Deputy Ministers, there are, on average, 103 intergovernmental meetings each year in Canada. This figure would increase tenfold if one were to include all the additional meetings that occur among lower level officials in each sector. Intergovernmental agreements shape almost all spheres of governmental activity from the environment through to economic and social policy. In this context, it is important to take seriously the transparency and accountability challenge.

Much of the criticism of executive federalism is leveled at the arena of what many refer to as “summit politics”—high profile meetings of the Prime Minister and Premiers. Yet the bulk of executive interaction actually occurs among sector Ministers and their officials. The three early childhood development (ECD) and early learning and child care (ELCC) agreements that were reached in the social services sector between 2000 and 2005 illustrate the strengths and weaknesses of the critique of executive federalism. Examining this case can also help point the way toward solutions to the transparency and accountability challenge.

### 3.1 *Executive Federalism: A Canadian Inevitability*

Executive-level negotiation and collaboration is inherent to the nature of Canada's constitutional arrangements. While the Constitution defines largely separate spheres of responsibility, it places responsibility for the most costly welfare state programmes with the provinces and majority of the revenue raising powers with the federal government. In addition, there are no institutional arrangements (e.g. provincial government representation in the federal parliament) that provide an alternative forum for the consequent need to negotiate interdependence. In addition, as policy problems and solutions (such as the environment and participation in international accords) become increasingly complicated, they require action from multiple levels governments, further reinforcing inter-governmental entanglement.

The tension between what Banting and Corbett refer to as the “logic of social citizenship and the logic of federalism” is yet another reason why interdependence is inevitable in Canada. The logic of federalism says that regional diversity is the legitimate consequence of regional governments responding to the needs and priorities of their constituents. The logic of “social citizenship” calls for national standards and uniformity to ensure that everyone has the same set of welfare state programmes and services to which they are entitled as members of the larger polity. The experience of Canadian federalism suggests that Canadians are themselves ambiguous in their attitudes toward these two extremes—and ever changing in their view about where the country should sit along that spectrum. While many certainly hold strong views about whether Canada should be more or less centralized, it seems clear that many others may change their views depending on which government of the day supports the issues that they care about most: they want diversity when it suits and the protection of national standards when that suits.

### 3.2 *The Case Against Executive Federalism*

The *transparency* challenge relates directly to the process of inter-governmental relations: the elitism of closed-door negotiations, the

lack of transparency and citizen input and the absence of any role for legislatures in debating intergovernmental agreements. The *accountability* challenge stems from the results of that process: intergovernmental agreements. Who should be held accountable for what is difficult to determine when you have one government spending money that was raised by another. The ability of the federal government to be accountable to its parliament for what is accomplished with funds spent by a different government is limited. Similarly, accountability is confused for the receiving government because it is not accountable to its own legislature for raising those funds. An obvious example in Canada is health care. As Jennifer Smith points out, “the complex ongoing negotiations between the two levels of government that is required to keep the health-care system functioning defies any simple notion of accountability”.<sup>1</sup> Each order of government can easily blame the other for the failures of the system and citizens aren’t in a position to see past the spin coming from all directions.

The example of Canadian child care negotiations in the first half of this decade is useful in assessing both the extent of the transparency and accountability challenge and in pointing toward possible solutions.

### ***3.3 Transparency: Social Services Sector Relations and Child Care Negotiations***

Canadian Social Services Ministers and Deputy Ministers typically meet twice a year. Agendas for these meetings are determined largely through consensus, though the federal government tends to have the upper hand in determining when to meet and what is discussed. Below these tables, there are large assortments of officials’ tables that meet on a frequent ad hoc basis throughout the year by conference call and in person.

Some of these working groups of officials are formed once there is a ministerial decision to work on a joint initiative in a particular area. In the case of child care, the Federal/Provincial/Territorial

<sup>1</sup> Jennifer Smith, “Federalism and Democratic Accountability”, Sept. 2005.

(FPT) Early Childhood Development Working Group was formed in the late 1990s as a precursor to negotiations. It built on the long-standing relationships and common expertise of the FPT Directors of Early Learning and Child Care Committee, an information sharing forum with a long history. The first stage of its work was to develop a research paper on early childhood development. To do so, the group engaged with key national and regional stakeholders and experts in the field. In other words, the process was characterized by consultation beyond government at the stage of problem definition and analysis. In parallel to this, the National Children's Agenda consultation paper was developed to seek input on a range of children's policy issues, including child care. Consultation sessions across the country were organized based on this paper as well, and it was accompanied by a workbook that was made available to community groups and schools to encourage a broader array of people to share their views.

Once it became clear that the federal government was interested in reaching a funding agreement, negotiations began. While these negotiations followed the more traditional path of executive federalism—discussions among officials over the course of a number of months culminating in a First Ministers Meeting where the agreement was endorsed and made final—they were informed by the research and consultation stage that had come before. This experience suggests that, if you take a longer-term view of the process, the world of executive federalism is actually more open and, thus, transparent than often thought.

The transparency critique of executive federalism can be challenged from yet another perspective. All of the governments that came to the negotiations represented views that had been formed through their own independent political systems. Placing the focus of criticism on the intergovernmental sphere, rather than at each government individually downplays the legitimacy of the different political processes at the regional level. In other words, following the logic of federalism rather than the logic of social citizenship, scrutiny about the lack of transparency is as relevant to the regional processes that led to the formulation of each government's position as it is to the process of the table itself.

Ontario and Alberta had both elected conservative governments that were not supportive of the vision for child care proposed by the federal government. Moreover, all provinces agreed that the federal vision was problematic in that it limited their flexibility to build on the already disparate systems that existed across the country. The consequence of these differences was that the first negotiations resulted in a broad agreement (the 2000 ECD accord) where provinces were given the flexibility to invest in four areas of early childhood development, of which “early learning and care” was only one option and not a requirement.

Three years later, the federal government opened discussions on a successor agreement. By this stage, the support for child care had grown stronger across the country, leading the positions of some of the key governments (in particular Ontario and Alberta) to change. As a result, the federal government was successful in defining the scope of the negotiations to regulated child care. One of the key negotiating points was how to define “regulated” given the different legislative regimes across the country and the different child care policies and systems that were already in place for provinces to build upon.

By 2005, the dynamic had shifted even further in favour of the child care lobby and the federal government demanded that all jurisdictions invest in the “QUAD” principles—quality, universally accessible, available, and developmental child care. In other words, the vision for child care that was embodied in the agreement had become much more robust, moving the federal government closer to its long-promised national system. Multilateral negotiations on this round did not survive this new federal position and broke down in the final stages. The result was a series of bi-lateral agreements, with the most eager provinces—Saskatchewan, Manitoba, and Ontario (which had recently elected a Liberal government that shared a vision for quality child care)—being the first to sign. Eventually all the others could not hold out against the offer of funding and so also signed. Unfortunately, these bilateral agreements were reached in the dying days of the federal Liberal government and the newly elected Conservative government chose to cancel them all.

The successive agreements reached under the federal Liberal government differed not only in the scope of eligible expenditures; they also reflected a pendulum swing in accountability arrangements. The weaknesses of the accountability arrangements in each of the three agreements suggest that the accountability critique of executive federalism should be taken seriously and solutions should be found.

### ***3.4 Accountability: Early Childhood Development and Early Learning and Child Care agreements***

All three of the child care agreements reached in the Canadian social services sector between 2000 and 2005 (2000 ECD, 2003 multi-lateral ELCC and the 2005 bilateral ELCC agreements) contain accountability arrangements based on the concept of public reporting and the principle that governments are accountable to their constituents and not to each other. Public reporting as the accountability mechanism represents a major shift away from earlier agreements such as the Canada Assistance Plan, which were characterized by detailed accounting and federal scrutiny and determination of what constituted eligible provincial spending.

Because the 2000 ECD agreement, which set the tone for the agreements that followed, was negotiated in tandem with the first of the recent major healthcare funding agreements, a key provincial-territorial consensus behind two key principles defined the terms of the negotiations: (1) defence of jurisdiction through flexible arrangements and broad eligibility, and (2) insistence that the agreement reflect a relationship of equals. The “relationship of equals” argument is what lies behind the shift to public reporting and away from one order of government reporting to another.

In some ways, the public reporting approach can be seen as a step forward in terms of improved accountability in the sphere of intergovernmental relations. This approach requires governments to publicly track spending and report on what is achieved or purchased with that spending. The ECD and ELCC agreements also required governments to begin to track the outcomes in the form of key indicators of healthy child development (though Canadian governments all have a lot of room to improve in this regard).

On the other hand, these public reporting arrangements have obvious weaknesses as mechanisms for ensuring governments are accountable. Public reports are essentially political communications documents. How governments choose to position the information, the level of detail they choose to include, their choice of when to release the reports and with what level of profile, all have an impact on how the information is interpreted by the public. For example, the 2000 ECD agreement includes no requirement for governments to track spending against a particular baseline so there is no ability to judge whether the baseline shifts from year to year. Moreover, most provinces post these reports on their websites without much effort to draw profile to their release.

As a step toward improving accountability in the 2003 agreement, the baseline was defined at the outset (all existing spending on regulated child care) and so one potential loophole was closed. In all other aspects, the accountability requirements in 2003 agreement were very similar to 2000. Most significantly, both agreements transferred the funding through the Canada Social Transfer, a broad unconditional transfer mechanism. As a result, the commitments to spend and report on the funding according to the terms of the agreement were just that: commitments. There was little the federal government could do if a province or territory chose not to abide by the agreement.

By 2005, having experienced a number of very public accountability scandals, the federal government had shifted its position on acceptable accountability arrangements back toward a more detailed, rigorous accountability regime. First, a separate funding mechanism was created legislatively for the agreements and, rather than being simply political accords, they were drawn up as “legal agreements” signed by both parties. Second, the agreements required provinces and territories to identify and report against specific multi-year targets for each of the QUAD principles. The reporting mechanism remained the public report but, at least in theory, the federal government now could withhold funding if provinces did not live up to the terms of the agreement.

While the arrangements in the 2005 bilateral ELCC agreements can be considered an improvement on the earlier accords, many of the concerns about public reporting remain relevant.



Moreover, although it was never tested because the agreements were cancelled, it is doubtful that the federal government would have actually withheld funding from a province or territory on the basis of a questionable public report.

A more fundamental problem with the reliance on public reporting as the vehicle for accountability is that it places the shape of these reports and their content at the heart of the negotiating process alongside other negotiating goals for each party. The inclusion of more detail in the reporting requirements, such as specific measures like the number of spaces created, creates a conflict between the goal of accountability and the principle of flexibility inherent to the logic of federalism. For instance, requiring governments to track the number of new spaces created each year effectively forces governments to focus on system expansion over other goals such as quality improvement.

Fundamentally, the problem for accountability in the negotiation of intergovernmental agreements is that it, like everything else in a negotiation, risks becoming merely another negotiating card to be played or traded as needed. Moreover, the principle of accountability (which everyone supports) is often used to legitimate a host of other negotiating goals over which there is no agreement. For instance, in each of these sets of negotiations, the federal government's position in defence of the principle of accountability became the language with which they pursued their desire for national standards in an area of provincial jurisdiction.

Where the transparency critique of executive federalism may be overstated, the charge that executive federalism results in poor accountability is clearly justified. Negotiations are unlikely to produce arrangements that can reliably hold governments to account while respecting the principle of regional difference that is fundamental to federalism.

### **3.5 Future Directions?**

The case of the 2000 ECD and 2003 and 2005 ELCC agreements demonstrates both the transparency and accountability challenges of executive federalism in Canada. Since 2005, demand for

continued investment in child care has remained strong and will likely continue to outstrip provincial resources in the years to come. Even the current Conservative government has invested in child care despite rejecting the QUAD vision and cancelling the 2005 bilateral agreements. Interestingly, they have returned to the vehicle of the unconditional Canada Social Transfer to allocate the funds and have actively championed provincial/territorial independence rather than the interests of accountability between governments. Arguably, this means that accountability has taken a step backwards rather than forwards. Yet, Canadians' frustration over the lack of transparency and accountability, along with their desire for intergovernmental cooperation to address problems that cannot be solved by any one level of government alone, is likely to grow in the years to come. Solutions to the transparency and accountability challenge must be found.

While the process that led up to the 2000, 2003, and 2005 negotiations was more open, with more involvement from stakeholders and the public, than is commonly understood, the agreements *were* ultimately the result of behind-closed-door negotiations and there is more that can be done to improve the transparency of the negotiating table. Equally important, however, is to improve the transparency of the process of policy/position development within each government prior to and throughout the negotiations.

Increased use of e-government forums and initiatives to enable greater participation, along with greater scrutiny by media of each government in the negotiation and of the negotiations themselves would go a long way toward improving the transparency of the process and ensuring that the perspectives of Canadians are reflected in the process. For instance, a number of Canadian governments have created Children's Advisory Committees to provide key experts, stakeholders and parents with a continued voice. Similarly, governments are expanding their use of the internet and beginning to realize its potential for providing greater access to government.

Just as it is too narrow to focus only on the sphere of intergovernmental negotiations when addressing the transparency challenge posed by executive federalism, finding ways to make governments more accountable to Canadians for the outcomes of

those negotiations requires mechanisms that are outside of the process itself. Because the principle of accountability risks becoming a mere bargaining chip used to further other negotiating goals, intergovernmental agreements are always likely to contain insufficient accountability measures.

A greater role for legislatures, such as through legislative committees, would improve both transparency and accountability. They could be involved in the process of intergovernmental negotiations—for instance through a requirement that they approve or at least examine or debate, intergovernmental agreements before governments are able to sign them. Similarly, they could play a role in scrutinizing the performance of governments in relation to the commitments made in the agreements.

Yet another possibility for improving accountability in the context of executive federalism would be to give a greater role to Auditors General. The federal Auditor General could be given responsibility for looking into the books of provincial governments to the extent that they spend federally raised tax revenues. Alternatively, and more consistent with the principle of federalism and respect for jurisdiction, there could be mandated collaboration between federal and provincial/territorial auditors to ensure they work in tandem in relation to intergovernmental agreements. For instance, they could agree to a common auditing schedule or approach vis-à-vis such agreements so that all parties were held to common standards of account.

Over the same period that governments were negotiating the ECD and ELCC agreements, interest in the “democratic” agenda in Canada grew. While at the federal level, suggestions were floated to revitalize Parliament through a greater role for Committees and freer (non party-discipline) votes, a number of provinces were exploring proposals for electoral reform to increase the legitimacy of their legislatures. Today, however, the future of these initiatives does not appear to be so bright. In British Columbia, a referendum on a version of proportional representation was narrowly defeated (57 per cent in favour where 60 per cent was the threshold required to pass). More recently, in Ontario the defeat of a similar proposal was by a wide margin (only 37 per cent voted in favour of change).

At the federal level, the most recent Speech from the Throne focuses the democratic agenda on senate reform and it seems unlikely that proposals will address the accountability/transparency challenge of intergovernmental relations. Without greater debate about the democratic agenda and the suggestions outlined above, Canadians' view about the legitimacy of their governments and of the federal process will not likely improve.

#### **4. Conclusion**

Executive dominance in intergovernmental relations poses a serious challenge to federalism in Canada and India. Given the nature of the constitutional arrangements in both countries, along with the growing complexity of issues requiring government action, interdependence, collaboration, and cooperation between federal and state governments are necessary to ensure continued development at the regional and national level. Yet, where executives dominate that interaction, it becomes very difficult to hold the two orders of government to account and to ensure transparency in their interactions.

It is very difficult, or rather impossible, to do away with executive federalism in both India and Canada. Yet attempts can be made to reform the institutions of federalism and make it more open and workable, and thus more democratic. New measures are needed in both countries to provide for responsive and accountable executives and transparency in relation to intergovernmental affairs at both the federal-provincial/territorial level and centre-state level in Canada and India respectively. The examination of India and Canada in this paper has pointed to a number of possible reforms to improve accountability and transparency. They involve (1) creating a greater role for legislatures, (2) opening up intergovernmental negotiations, (3) improving third-party accountability through the use of Auditors General, and (4) providing direct access to citizens to seek information about and make comments on the activities of governments.

Executive federalism in all orders of governments tends to weaken governments' accountability towards their legislatures and,

thus, citizens at large. As a result, it is necessary for respective legislatures to perform a vigilant role in holding the executive arm of government accountable for its performance in intergovernmental negotiations, agreements, and decision making.

In Canada, the executive heads of both orders of government are currently not accountable towards their respective legislatures for intergovernmental relations, as they can negotiate and undergo intergovernmental agreements without seeking approval or even allowing for legislative debate before ratifying agreements. In India, the structure is similar to Canada; executive heads of both level of government tend to sideline the legislature, which confines the role of the legislature to that of a “rubber stamp” in their intergovernmental relations. It becomes difficult for the legislatures to exercise their power efficiently amidst executive dominance. To overcome such challenges in both countries, the establishment of intergovernmental committees could prove an effective step in achieving transparency and accountability in intergovernmental affairs. These committees should work at all level of governments and include, or seek advice from, independent and qualified experts who can act as watchdogs, able to question and hold executives accountable in intergovernmental negotiations and agreements.

“Open government” is the essence of democratic accountability and transparency in a federal set up. In both Canada and India, “cooperative federalism” and intergovernmental interdependence have strengthened executive federalism: governments observe secrecy in their interactions with each other and carry out intergovernmental relations behind closed doors. Therefore, openness of inter-ministerial meetings to allow for public scrutiny and intervention can reduce executive dominance in intergovernmental negotiations, agreement, policies, and decision-making processes.

The need for accountability and transparency is necessary in intergovernmental financial matters also. The institution of Auditors General can prove beneficial if, at both the centre and state/provincial levels, they exercise and perform their duties and obligations in a more efficient, active, and coordinated manner in keeping an eye on the executive processes used by the federal/centre government in the allocation of funding to provincial/state governments.

Cooperation among Auditors General at the provincial/state level would allow for third-party independent review of government performance against intergovernmental commitments while respecting the independence of each order of government.

The establishment of information centres can also ensure accountability and transparency in intergovernmental relations. These centres could provide information to the public regarding upcoming and ongoing discussions, planning, and negotiations between executive heads of the two orders of government in order to strengthen their intergovernmental affairs. Information could be provided in the form of brochures and other publications, either in print or web-based. The information provided should cover all executive-dominated institutions effecting intergovernmental relations, and range from economic matters, such as the utilization of funds granted by the federal/central government, to policy concerns such as the scope of eligible expenditures, performance measures and goals of intergovernmental agreements. These information centres should also provide a forum to receive complaints, observations, and other input from the public and should encourage interactive programmes wherever feasible for enquiry and response directly between executives and citizens.

All these measure could prove to be effective and progressive steps in achieving accountability and transparency in intergovernmental relations where they are dominated by executive federalism.